

December 19, 2019

The Honorable Alex Azar
U.S. Department of Health and Human Services
Herbert H. Humphrey Building, Room 509F
200 Independence Avenue, SW
Washington, DC 20201

RE: DOCKET ID HHS-OS-2019-0014-0001, RIN 0991-AC16, Health and Human Services Grants Regulation

Dear Secretary Azar:

On behalf of the National Association of County and City Health Officials (NACCHO) and the nearly 3,000 local health departments across the country, I write to provide comments in response to the Department of Health and Human Services' (HHS) Notice of Proposed Rulemaking, Health and Human Services Grants Regulation. NACCHO is concerned that the proposed rule would have a negative affect on the health and wellness of individuals in the communities our members serve and to our nation as a whole.

Local health departments work every day in their communities to prevent disease, promote wellness, and protect health. They convene community partnerships and facilitate important conversations with diverse stakeholders on how to create the conditions in which all people can be healthy. NACCHO and local health departments are partners with HHS to enhance the health of all individuals in the United States.

NACCHO and our members are committed to expanding public health and health care access to all who need it. Unfortunately, the proposed rule would do the opposite. The proposed rule would strip away HHS' central nondiscrimination regulation for federal awards. This HHS regulation prohibits discrimination in HHS grant-funded programs based non-merit factors such as age, disability, sex, race, color, national origin, religion, gender identity or sexual orientations. The proposed rule would give taxpayer-funded entities the ability to receive federal dollars and discriminate against LGBTQ people, women, and religious minorities. These are some of society's most vulnerable people who already face healthcare challenges and need protection from discrimination. Moreover, the impact of the proposed rule cannot be understated; it would change these important protections for nearly all HHS grants and contracts that provide critical services and supports, including foster care, Head Start, HIV prevention, provision of health care through community health care centers, energy assistance, and many more.

Currently, a series of federal statutes, regulations, and HHS policies provide important nondiscrimination requirements for federally funded programs administered by HHS. The Civil Rights Act of 1964 prohibits discrimination in all government-funded services based on race, color, and national origin as does the Rehabilitation Act of 1973 prohibit discrimination based on disability, and the Age Discrimination Act of 1975 prohibits discrimination based on age. While these protections would remain in place for all HHS programs, the current central nondiscrimination regulation prohibits the discrimination on non-merit factors beyond those mentioned above. As such, the HHS central nondiscrimination rule in place is necessary to cover those groups and ensure that all who are eligible for HHS-funded programs can access them. In the absence of the central



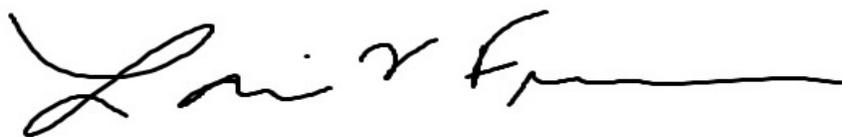
nondiscrimination regulation for HHS awardees, most HHS-funded programs will have the ability to deny services to particular groups based on sex, religion, and sexual orientation and gender identity.

Sex and gender discrimination in health care has a disproportionate impact on women of color, LGBTQ people, and individuals living at the intersections of multiple identities—resulting in them paying more for healthcare, receiving improper diagnoses at higher rates, being provided less effective treatments, and sometimes being denied care altogether.¹ The proposed rule, if enacted, would exacerbate these issues.

Similarly, the proposed rule could undermine existing HHS priorities. For example, the proposed rule could restrict access to critical health services including HIV prevention and treatment and would be a serious setback to the administration's *Ending the HIV Epidemic* initiative. In 2016, men who have sex with men (MSM) accounted for two-thirds of HIV cases in the United States, and while many demographic groups are experiencing declines in HIV incidence, rates remain stable for Black MSM and are increasing for Hispanic/Latino and Asian-American MSM.^{2,3} Moreover, with this new proposed rule, discrimination based on gender identity and/or sexual orientations could result in denial of services by federally funded programs for LGBTQ people, putting the health and well-being of millions of Americans at risk and exacerbating health disparities.

The proposed rule seeks to limit the enforcement mechanisms available under the current HHS nondiscrimination regulations, which would have devastating effects on vulnerable populations and lead to greater access barriers. Therefore, NACCHO calls on HHS to reject the proposed rule and maintain strong health protections for all. NACCHO and local health departments are prepared to work with your Department to improve and protect health across our nation. Please contact Adriane Casalotti, MPH, MSW, NACCHO Chief of Government and Public Affairs, with any questions at acasalotti@naccho.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Lori Tremmel Freeman". The signature is fluid and cursive, with a long horizontal line extending from the end.

Lori Tremmel Freeman, MBA
Chief Executive Officer

References:

1. MaryBeth Musumeci et al., HHS's Proposed Changes to Non-discrimination Regulations under ACA Section 1557, Kaiser Family Foundation (Jul. 1, 2019), Retrieved August 8, 2019 from <https://www.kff.org/disparities-policy/issue-brief/hhss-proposed-changesto-non-discrimination-regulations-under-aca-section-1557/>.
2. Centers for Disease Control and Prevention. Diagnoses of HIV infection in the United States and dependent areas, 2016. HIV Surveillance Report 2017;28.
3. Centers for Disease Control and Prevention. Estimated incidence and prevalence in the United States 2010-2015. HIV Surveillance Supplemental Report 2018;23(1).