



December 19, 2019

Secretary Alex Azar
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: RIN 0991–AC16

Submitted electronically at [regulations.gov](https://www.regulations.gov)

Dear Secretary Azar,

The Center for Law and Social Policy (CLASP) writes in strong opposition to the Notice of Proposed Rulemaking to the Department of Health and Human Services, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards (RIN 0991–AC16). CLASP is a national, nonpartisan, anti-poverty nonprofit advancing policy solutions for people with low incomes. We work at both the federal and state levels, supporting policy and practice that makes a difference in the lives of people living in conditions of poverty.

These comments draw on CLASP's experience with Head Start, refugee resettlement, child welfare services, Title X, and mental and behavioral health block grants. HHS funding and contracts provide essential services to individuals and families with low incomes in these areas. We believe that access to these programs is critical for everyone; however for many women, youth, young adults, and families, particularly for families of color including those who are low-income, assistance often remains inaccessible. We are deeply concerned that this proposal would invite discrimination against LGBTQ people, women, and people who belong to minority faiths.

CLASP provides technical assistance and policy expertise for many of the recipients of the HHS grants in question, including state and local agencies, and community-based organizations. CLASP believes and stresses the need to hear from those who have lived experience, to determine what policy changes are useful necessary to improve one's livelihood. We understand the need to protect and expand critical resources for adults, children, and communities with low incomes. We believe that this rule, if implemented, would create a larger barrier for many communities with low incomes to access needed services.

The process put forth by the Trump Administration on implementing this rule does not put Americans first. Providing the public with only thirty days to comment, and ensuring the rule is effective immediately is a violation of understanding what the public wants and needs, and not honoring due process--thereby promoting inequity. In this rule, the Trump Administration proposes to dramatically

scale back existing regulations. The proposed rule will remove all the protected categories that are not explicitly in the statute passed by Congress and, effective immediately, it will stop enforcing this rule.

This proposed rule rolls back key anti-discrimination protections and blatantly allows discrimination by agencies and programs that are funded by HHS. Rather than ensuring that taxpayer funds are used appropriately to support every eligible person who needs help, this proposed rule builds on the Trump Administration's effort to greenlight discrimination throughout the federal government. In HHS alone, there have been proposals to strip anti-discrimination protections in healthcare and to allow hospitals, clinics and doctors' offices to refuse care based on the provider's religious beliefs. The administration is also seeking to allow discrimination in housing, in workplaces with federal contracts, on college campuses, and against immigrants who have disabilities. The Administration should immediately rescind this and other related proposals and vigorously enforce the existing non-discrimination protections.

The impact of the rule will be profound. According to a December 4, 2019 Congressional Research Service report on this proposed rule, three federal statutes would only likely protect against discrimination in HHS grant programs on the basis of race, color, national origin, disability, or age. Whether discrimination on the basis of sex and religion are prohibited would vary on a program-by-program basis. There are no statutes that would expressly prohibit discrimination on the basis of sexual orientation or gender identity. Therefore, the Trump Administration will affirmatively allow discrimination based on religion, sex, gender identify and sexual orientation, and that other factors may also be allowed.

If this proposal is implemented, it will strip away essential protections that prevent people who participate in these government services from being turned away, denied services, or treated differently. Instead, there will be only limited protections in place and a clear indication from HHS that they do not plan to enforce prohibitions on discrimination. This rule allows agencies to prioritize their own personal beliefs over the needs of children.

This rule will impact nearly all HHS health and human services grants and contracts, including foster care, Head Start, HIV prevention, community health centers, energy assistance and, refugee resettlement. These programs provide more than \$500 billion in grants each year and serve countless individuals. In addition to putting millions of lives at risk, this proposal directly undermines the mission of the HHS: to ensure the health and well-being of all Americans.

The implication of this proposal is that agencies and programs that receive HHS funding will be able to pick-and-choose the individuals that they want to serve. It validates and promotes racist and homophobic ideologies. For example:

- Community meal programs designed to support older adults could refuse to deliver food to seniors who identify as LGBTQ or transgender.
- Head Start grant recipients, and other federally funded after school programs and childcare facilities could refuse to serve children with married same-sex parents or refuse to provide services to transgender youth.
- Transitional support programs for youth who are aging out of foster care could refuse to support LGBTQ youth or people who have children outside of marriage.
- Programs supporting youth experiencing homelessness could turn away LGBTQ youth.

- A transgender victim of domestic violence who contacts a federally funded hotline for support could be denied assistance.
- A Jewish couple could be rejected from adopting a child on the basis of their religion.
- Adoption and foster care agencies could refuse to place a child in foster care with a same-sex couple or an LGBTQ family member. Turning away prospective families means foster youth will stay in care longer than they need to, or they will be placed in, or remain in, congregate care rather than placed in a family-like setting.
- An older man living in rural Kentucky may be denied opioid treatment due to his religion.
- An unaccompanied immigrant who is a transgender girl could be forced to be housed in a boy's shelter or in isolation.
- A person of Muslim faith living with HIV could be denied services critical to managing their health.
- HIV prevention programs could refuse to recognize the existence of LGBTQ people in their outreach and educational materials.
- Federally funded substance use prevention and treatment programs could refuse services to LGBTQ people.
- LGBTQ people could have limited access to SUD treatment access through funding going to treatment organization and provider groups that discriminate against LGBTQ persons. Other Medicaid grant programs include \$50,000,000 in capacity building grants to address the opioid crisis and substance use disorders (SUD).¹ Studies show that LGBTQ persons are disproportionately affected by SUD, in part, due to minority stress stemming from discrimination.² The proposed rule and notice of nonenforcement would not only limit SUD treatment access by potentially funding organizations and provider groups that discriminate against LGBTQ persons. It would contribute to the minority stress experienced by LGBTQ persons that helps lead to SUD. No one should be denied treatment for SUD or other conditions because of a person's sexual orientation, gender identity, religion, or other non-merit factor.

Mental Health

This rule could have grave consequences for individuals and communities experiencing mental health conditions. Those that identify as LGBTQ are more than twice as likely as heterosexual men and women to have a mental health condition in their lifetime.³ LGBTQ young people are more than twice as likely than heterosexual young people to feel suicidal.⁴ Refusing to provide key mental health services not only affects the individual, but their families and communities.

People could not receive critical mental health services because of their religion, gender identity, sexual orientation, or because of perceptions due to racism and discrimination. This is detrimental not only to an individual's health, but to the public health of the country.

Foster Care

The impact this proposal would have on foster care children is particularly dramatic. At any given time, there are roughly 443,000 children and youth in foster care—and already there are too few homes

available them. This rule exacerbates this crisis. Child welfare agencies should be ensuring that all children have access to all needs and services—not promoting their personal beliefs.

Because of this rule, qualified prospective parents may be turned away based on their religion, sexual orientation or gender identity. Family and close caregivers may also be turned away based on an agency’s personal beliefs despite the research that has shown that placement with relatives is a protective factor for a child.

The impact of this discrimination will fall most heavily on children who are currently not well served by the child welfare system, including LGBTQ youth, youth of color, and youth with disabilities. These youth are already more likely to experience increased placement instability—and this rule will let the agencies put them further out on their own.

A 2017 survey of over 2,500 foster youth showed that LGBTQ foster youth of color were 65% more likely to report over ten placements than their white, non-LGBTQ counterparts.

Lesbian, gay, and bisexual foster youth are more than twice as likely than heterosexual foster youth to be moved from their first placement at the request of their caregiver or foster family. This indicates that there’s already a desperate shortage of appropriate, supportive placements for these youth.

The foster care system has Congressionally mandated goals—one of which is improving placement stability and quality for the over 20 percent of youth in foster care who identify as LGBTQ+. The recently-passed Family First legislation specifically instructs state child welfare agencies to enact measures that will reduce inappropriate use of foster care facilities, group homes, and other non-family placements for foster youth. This rule does the opposite.

Conclusion

Taxpayer dollars should never be used to discriminate or hurt the most vulnerable among us. Instead, all agencies and programs that receive federal funding should provide services to all individuals who need the support. The Administration must uphold the existing non-discrimination regulations and immediately rescind this proposal.

¹ CMS-2C2-19-001 Substance Use Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities (SUPPORT) Act: Section 1003 Demonstration Project to Increase Substance Use Provider Capacity (Aug. 9, 2019).

² National LGBT Health Education Center, *Addressing Opioid Use Disorder among LGBTQ Populations* (Oct. 2018) at 2, <https://www.lgbthealtheducation.org/wp-content/uploads/2018/06/OpioidUseAmongLGBTQPopulations.pdf>.

³ Semlyen J, et al. “Sexual Orientation and Symptoms Of Common Mental Disorder or Low Wellbeing: Combined Meta-Analysis Of 12 UK Population Health Surveys.” *BMC Psychiatry*. 2016. 24;16:67. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4806482/>

⁴ Kann, L., O’Malley Olsen, E., McManus, T., Harris, W. A., Shanklin, S. L., Flint, K. H., . . . Zaza, S. (2016). Sexual Identity, Sex of Sexual Contacts, and Health-Related Behaviors Among Students in Grades 9–12 — United States and Selected Sites, 2015. Retrieved from <https://www.cdc.gov/mmwr/pdf/ss/ss60e0606.pdf>