



Officers
Chair
Judith L. Lichtman
National Partnership for
Women & Families
Vice Chairs
Thomas A. Saenz
Mexican American Legal
Defense and Educational Fund
Hilary Shelton
NAACP
Secretary/Treasurer
Lee A. Saunders
American Federation of State,
County & Municipal Employees
Board of Directors
Kevin Allis
National Congress of American Indians
Kimberly Churches
AAUW
Kristen Clarke
Lawyers' Committee for
Civil Rights Under Law
Alphonso B. David
Human Rights Campaign
Rory Gamble
International Union, UAW
Lily Eskelsen Garcia
National Education Association
Fatima Goss Graves
National Women's Law Center
Mary Kay Henry
Service Employees International Union
Sherrilyn Ifill
NAACP Legal Defense and
Educational Fund, Inc.
David H. Inoue
Japanese American Citizens League
Derrick Johnson
NAACP
Virginia Kase
League of Women Voters of the
United States
Michael B. Keegan
People for the American Way
Samer E. Khalaf
American-Arab
Anti-Discrimination Committee
Marc Morial
National Urban League
Janet Murguía
UnidosUS
Debra L. Ness
National Partnership for
Women & Families
Rabbi Jonah Pesner
Religious Action Center
Of Reform Judaism
Lisa Rice
National Fair Housing Alliance
Anthony Romero
American Civil Liberties Union
Maria Town
American Association of
People with Disabilities
Richard L. Trumka
AFL-CIO
Toni Van Pelt
National Organization for Women
Randi Weingarten
American Federation of Teachers
John C. Yang
Asian Americans Advancing Justice |
AAJC

President & CEO
Vanita Gupta

May 20, 2020

The Honorable Alex Azar
Secretary
U.S. Department of Health and
Human Services
200 Independence Avenue SW
Washington, DC 20201

Roger Severino
Director
Office for Civil Rights
U.S. Department of Health and
Human Services
200 Independence Avenue SW
Washington, DC 20201

Derek Kan
Executive Associate Director
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

Paul Ray
OIRA Administrator
Office of Management and Budget
725 17th Street NW
Washington, DC 20503

Seema Verma
Administrator
Centers for Medicare & Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244

Re: Nondiscrimination in Health and Health Education Programs and Activities, Final Rule (RIN 0945-AA11)

Dear Secretary Azar and Mr. Severino:

On behalf of The Leadership Conference on Civil and Human Rights and the 278 undersigned organizations, we urge you, at a minimum, to suspend the issuance of this harmful final rule during the current COVID-19 national emergency, the growing economic recession, and increasing rates of unemployment.

The nation is now facing an unprecedented public health crisis that has cost over 90,000 lives.¹ While the death toll continues to rise, COVID-19 has strained our medical systems and essential workers, shuttered much of our economy, and is widely expected by public health experts to last for months to come.

We cannot imagine a more inappropriate and irresponsible time to publish a final rule that encourages discrimination and deprives patients of critical information about their rights and access to care. Already, people of color have been disproportionately affected by COVID-19.

¹ "Cases in the US." CDC. May 19, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

Latino and Black residents in New York City, for example, are dying at twice the rate of their white peers.² LGBT people, particularly LGBT people of color, are also uniquely vulnerable at this time. Additionally, the pandemic has caused a rise in racist harassment and hate crimes against Asian Americans, further instilling fear when seeking care free from discrimination. This rule would inappropriately authorize the denial of medical care — including testing and treatment for COVID-19 — to some populations at greatest risk from this deadly virus and worsen health disparities. That’s why this proposal was opposed by the nation’s leading associations of medical and mental health professionals, even before the current crisis.

As proposed by the U.S. Department of Health and Human Services, this rule would falsely tell hospitals and health plans that they could:

- Refuse testing or treatment because a patient is transgender or doesn’t conform to sex stereotypes.
- Refuse testing or treatment because a patient has had an abortion.
- Refuse testing or treatment to patients based on a provider or staff member’s personal beliefs.
- Refuse testing or treatment based on sexual orientation, even in programs that have banned such discrimination since the G.W. Bush administration.
- Incorporate discriminatory plan benefit designs that eliminate/limit coverage critical to people with disabilities or preexisting conditions and place certain kinds of treatments needed by people with specific disabilities on the most expensive copay tiers.
- No longer notify patients of their right to receive information in their primary language.
- No longer notify patients of their right to file a grievance if they’re mistreated.

In addition to the potential for the substance of the rule to exacerbate the current crisis, there are several procedural reasons why publishing a final rule during this ever-evolving crisis is inappropriate and irresponsible.

First, the conditions of this crisis make it impossible for many critical stakeholders to engage in the Office of Management and Budget’s public input process, as required by Executive Order 12866.

Second, these conditions make it impossible for health care entities to familiarize themselves with implementing this sweeping rule change, which would alter dozens of provisions of the current rule and create unnecessary burdens. The rapidly evolving nature of the pandemic also makes it impossible to determine appropriate effective dates for any rule changes at this time.

Third, pending Supreme Court decisions on the scope of federal sex discrimination laws and challenges to the Affordable Care Act also make it unwise to issue a final rule at this time. These rulings could potentially have major implications for the scope and legality of the final rule. HHS should await these rulings and thoroughly consider their implications before pressing forward with a final rule.

² Crear-Perry, Joia and McAfee, Michael. “To Protect Black Americans from the Worst Impacts of COVID-19, Release Comprehensive Racial Data.” *Scientific American*. April 24, 2020. <https://blogs.scientificamerican.com/voices/to-protect-black-americans-from-the-worst-impacts-of-covid-19-release-comprehensive-racial-data/>.

For all these reasons, we urge you not to move forward with this final rule. At a minimum, this rulemaking process should be suspended until at least 90 days after the termination of the current COVID-19 Public Health Emergency declared by Secretary Azar on January 31, and after a large majority of states are no longer subject to stay-at-home orders and closure of non-essential businesses.

HHS has called COVID-19 “an emergency of unprecedented magnitude.” So far, the administration has failed to take the necessary steps to make testing, contact tracing, personal protective equipment, and other critical supplies available to save lives. We urge you to devote the full attention of your administration to this crisis and to suspend non-emergency rulemaking — especially rules such as this one that could exacerbate the pandemic. If you have any questions, please contact Emily Chatterjee, senior policy counsel, at chatterjee@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
National Center for Transgender Equality
AbsoluteCARE Medical Center and Pharmacy
ACCESS
ACLU of Montana
Advocates for Youth
AFL-CIO
African American Ministers In Action
AIDS Alabama
AIDS Foundation Chicago
Alianza Nacional de Campesinas
American Association of People with Disabilities
American Association of University Women (AAUW)
American Atheists
American Civil Liberties Union
American Federation of Teachers
American Humanist Association
American Muslim Health Professionals
American Public Health Association
American Speech-Language-Hearing Association
Americans for Democratic Action (ADA)
Amnesty International USA
API Social Work Council
API Social Work Council Northern CA
APISWC (Asian Pacific Islander Social Work Council)
Appalachian Indivisible
Asian & Pacific Islander American Health Forum
Asian Americans Rising
Association for Chinese Families of the Disabled

Association for Community Affiliated Plans
Association of Asian Pacific Community Health Organizations (AAPCHO)
Association of People Supporting Employment First (APSE)
Athlete Ally
Atlanta Pride Committee
Bend the Arc: Jewish Action
Bridgercare
Cal Voices
California Black Women's Health Project
California LGBTQ Health and Human Services Network
California Pan-Ethnic Health Network
Callen-Lorde Community Health Center
Center for American Progress
Center for Constitutional Rights
Center for Elder Law & Justice
Center for Health Progress
Center for Independence of the Disabled, NY
Center for Law and Social Policy (CLASP)
Center for Medicare Advocacy
Center for Public Policy Priorities
Center for Public Representation
Center for Reproductive Rights
Center for the Study of Hate & Extremism - California State University, San Bernardino
CenterLink: The Community of LGBT Centers
Centro de los Derechos del Migrante, Inc.
Chicago House and Social Services Agency
Children's Aid
Chinese-American Planning Council (CPC)
Chronic Disease Coalition
Church World Service
Citizen Action of New York
Citizens' Committee for Children of New York
Clearinghouse on Women's Issues
Coalition for Asian American Children and Families
Coalition for Disability Health Equity
Coalition of Labor Union Women
Colorado Organization for Latina Opportunity and Reproductive Rights (COLOR)
Community Catalyst
Congregation of Our Lady of Charity of the Good Shepherd, U.S. Provinces
Consumers for Affordable Health Care
East Bay Asian Youth Center
East Bay Community Law Center
East Bay Refugee and Immigrant Forum

Empire Justice Center
Episcopal Diocese of Atlanta
Equal Rights Advocates
Equality California
Equality Federation
Equality Florida
Equality Montana
Equality New Mexico
Equality North Carolina
Equality Ohio
Equality Texas
EqualityMaine
Equity Forward
Families USA
Family Equality
Female-To-Male International, Inc.
Feminist Majority Foundation
Feminist Women's Health Center
FORGE, Inc.
Forward Montana Foundation
Forward Together Action
Gay City: Seattle's LGBTQ Center
Gender Equality Montana
Gender Spectrum
Georgia Equality
Georgians for a Healthy Future
GLBTQ Legal Advocates & Defenders (GLAD)
GLMA: Health Professionals Advancing LGBTQ Equality
GLSEN
Greater New York Labor-Religion Coalition
Health Access California
Heartland Alliance
Heartland Resistance Coalition, an Indivisible group
Hispanic Federation
Hmong Cultural Center of Butte County
Housing Choice Partners
HPEACE
Human Rights Campaign
Ibis Reproductive Health
Immigration Equality
Impact Fund
Indivisible Brookfield
Indivisible CA-33

Indivisible Georgia Coalition
Indivisible Houston
Indivisible IL9
Indivisible Illinois
Indivisible Lumpkin
Indivisible Madison (WI)
Indivisible Marching Buddies of Atlanta
Indivisible Metro East
Indivisible San Francisco
interACT: Advocates for Intersex Youth
Interfaith Alliance
International Association of Providers of AIDS Care
International Community Health Services
Jewish Women International
Justice in Aging
JustUs Health
Kentucky Equal Justice Center
Kentucky Mental Health Coalition
Kentucky Voices for Health
Korean Community Center of the East Bay
La Clinica de La Raza
Labor Council for Latin American Advancement
Lambda Legal
Lavender Rights Project
League of Women Voters of the United States
LGBT Bar Association of Greater New York
LGBTQ Connection
Long Term Care Community Coalition
Matthew Shepard Foundation
Mazzoni Center
Mental Health America of California
Mental Health America of Kentucky
Mercy Care
Methodist Federation for Social Action
Metro New York Health Care for All
MomsRising
Montana Chapter of the American Academy of Pediatrics
Montana Coalition Against Domestic and Sexual Violence
Montana Gender Alliance
Montana Human Rights Network
Movement Advancement Project
NAACP
NARAL Pro-Choice America

NASTAD

National Advocacy Center of the Sisters of the Good Shepherd
National Asian Pacific Center on Aging (NAPCA)
National Association of Area Agencies on Aging (n4a)
National Association of Councils on Developmental Disabilities
National Association of Human Rights Workers
National Association of Social Workers
National Association of Social Workers (NASW) California Chapter
National Black Justice Coalition
National Center for Lesbian Rights
National Center for Youth Law
National Coalition Against Domestic Violence
National Coalition for LGBT Health
National Consumers League
National Council of Jewish Women
National Council on Independent Living
National Disability Rights Network
National Employment Law Project
National Employment Lawyers Association
National Equality Action Team
National Health Care for the Homeless Council
National Health Law Program
National Hispanic Council on Aging
National Human Services Assembly
National Indian Education Association
National Korean American Service & Education Consortium (NAKASEC)
National LGBT Cancer Network
National LGBTQ Task Force
National Partnership for Women & Families
National Queer Asian Pacific Islander Alliance (NQAPIA)
National Trans Bar Association
National Women's Health Network
National Workrights Institute
Native Directions Inc.
Necessary Trouble Indivisible
New York Immigration Coalition
New York Legal Assistance Group
NM Center on Law & Poverty
Oasis Legal Services
OCA-Asian Pacific American Advocates
Office of the Health Care Advocate, Vermont Legal Aid
One Colorado
Openhouse, San Francisco

Orange County United Way
Out2Enroll
OutFront Minnesota
OutNebraska
Papa Ola Lokahi
People For the American Way
People's Action
PFLAG National
Planned Parenthood Federation of America
Positive Transformations Psychotherapy
Positive Women's Network-USA
Power to Decide
PowerOn, a program of LGBT Technology Institute
Prepare To Bloom, LLC
Pride at Work
Pride Center of Vermont
Progressive Leadership Alliance of Nevada
Public Advocacy for Kids (PAK)
Public Citizen
Quest Family Therapy / Gender Health Training Institute
Rabbinical Assembly
Racial & Ethnic Mental Health Disparities Coalition (REMHDCO)
Religious Coalition for Reproductive Choice
RESULTS
Rural Coalition
SAGE: Advocacy and Services for LGBT Elders
Santa Cruz Dyke Trans March
SC Appleseed Legal Justice Center
Shriver Center on Poverty Law
Silver State Equality-Nevada
SisterSong: National Women of Color Reproductive Justice Collective
Society for Maternal-Fetal Medicine
South Asian Network
Southern Black Policy and Advocacy Network
Southern Legal Counsel, Inc.
Southern Poverty Law Center
St. Louis STI Regional Response Coalition
TASH
Tennessee Justice Center
The AIDS Institute
The American Liver Foundation
The California Youth Empowerment Network
The Center for Sexuality & Gender Diversity

The Gerontological Society of America
The Lesbian, Gay, Bisexual & Transgender Community Center
The Progressive Vietnamese American Organization
The Trans 100
The Trevor Project
The United Methodist Church - General Board of Church and Society
The Volunteer Lawyers Project of Onondaga County, Inc.
The Womxn Project (TWP)
Trans Pride Initiative
Transgender Law Center
Transgender Legal Defense & Education Fund
Transgender Resource Center of New Mexico
TransVisible Montana
True Colors United
UHCAN Ohio
UnidosUS
Union for Reform Judaism
UNITED SIKHS
United Way Worldwide
United We Dream
Urban Strategies, Public Policy and Immigrant Affairs, Oakland, California
URGE: Unite for Reproductive & Gender Equity
VIETNAMESE AMERICAN COMMUNITY CENTER OF THE EAST BAY
Vietnamese American Community Center of the East Bay
Voices for Progress
Volunteer Lawyers Project of Onondaga County, Inc.
WAMM Phytotherapies
We All Rise
We've Been Too Patient
West Indivisible Suburban Engagement
West Virginians for Affordable Health Care
Western Front Indivisible
Whitman-Walker Health and Whitman-Walker Institute
WHOLE SYSTEMS LEARNING
Young Invincibles