



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 28, 2019

The Honorable Benjamin S. Carson, Sr., M.D.
Secretary
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410

Dear Secretary Carson,

We, the undersigned Attorneys General, urge the Department of Housing and Urban Development (HUD) to rescind its proposal to deny transgender and gender nonconforming individuals full and fair access to shelters that receive federal funds. HUD's proposal to effectively repeal the 2016 amendment to the Equal Access Rule is counter-productive and callous. Before the amendment, transgender and gender nonconforming individuals experienced high rates of violence, harassment, and discrimination in shelters.¹ Many, including many transgender youth, chose to sleep on the streets rather than access shelters that corresponded to their sex assigned at birth.² The amendment has provided appropriate and balanced protections for all individuals consistent with gender identity since its implementation. We see no reasoned basis to go backwards.

As you know, HUD did not lightly extend protections to transgender and gender nonconforming individuals in shelters with shared sleeping and bathing facilities. Rather, it spent four years studying the potential impact. And it carefully considered diverse perspectives through notice and comment rulemaking. HUD considered that a substantial percentage of

¹ THE REPORT OF THE 2015 U.S. TRANSGENDER SURVEY. WASHINGTON, DC: NATIONAL CENTER FOR TRANSGENDER EQUALITY 175-176 (2016), *available at* <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf> (last visited June 28, 2019) (finding that 70% of those who stayed in a shelter in the past year reported some form of mistreatment because of being transgender, and 52% were verbally harassed, physically attacked, and/or sexually assaulted because of being transgender).

² *Id.* at 180 (finding that 26% of transgender respondents did not seek shelter because they feared mistreatment and those whose families had kicked them out of the house for being transgender were more likely to avoid seeking shelter for fear of being mistreated).

transgender individuals experienced physical and sexual abuse in shelters; many left shelters due to mistreatment; and many were denied access altogether. HUD also considered that transgender youth, who experience high rates of homelessness, are particularly at risk for emotional distress resulting from discrimination or harassment in shelters.

The Equal Access Rule appropriately responds to those concerns. And it does so in a balanced way. The current rule ensures that shelter providers house and accommodate individuals in accordance with their gender identity, and it protects individuals from intrusive questioning about their gender and anatomy. At the same time, the rule requires providers to address residents' privacy concerns, such as by installing curtains or separate bathrooms or offering shifts for bathing. Under existing law, providers must assure a safe living environment for all residents, including one free from sexual harassment and discrimination.

In contrast to the current rule, HUD's new proposal appears to offer shelter providers virtually no guidance and offers transgender individuals virtually no protection. Providers can consider myriad factors such as "privacy, safety, practical concerns, religious beliefs, any relevant considerations under civil rights and nondiscrimination authorities, the individual's sex as reflected in official government documents, as well as the gender which a person identifies with" to decide whether to admit an individual to a shelter. Some of these factors point in opposite directions, such as an individual's gender identity and an individual's gender as listed on government-issued documents. Some, such as "practical considerations," suggest administrative convenience can weigh as heavily as consideration of an individual's safety and civil rights. The proposal "does not dictate a required basis" for making decisions other than they be "consistent with an overall policy." In other words, the proposal opens the door to the same discriminatory treatment that animated the rule change in the first place.

The proposal also permits providers to consider factors in deciding admission that HUD reasonably rejected during the rulemaking process less than three years ago. For example, HUD rejected the idea that transgender individuals pose greater risks to safety than non-transgender people. Rather, its experience showed that transgender and other gender nonconforming persons have been safely accommodated in single-sex facilities that match their gender identity. And experience under the rule in the intervening years has been no different. Indeed, the notion that transgender people are a threat to safety is grounded more in transphobia than fact.

Moreover, HUD must consider not only the safety of residents but also the safety of those turned away. According to a survey by the National Center for Transgender Equality, one in three transgender individuals experience homelessness at some point in their lives, but many have had difficulty accessing safe shelters.³ In Illinois, we have heard concern about the proposal, including that it is damaging to the physical and mental health of transgender and gender nonconforming people. Before the Equal Access Rule, one domestic violence advocate described the experience of a transgender woman who sought refuge at a shelter in

³ *Id.* at 178-82.

Massachusetts from her partner who had almost killed her.⁴ There, shelter staff asked her intrusive questions about her body before ultimately deeming her a man and turning her away. She returned to her abuser because she had nowhere else to go. According to Mara Keisling, executive director of the National Center for Transgender Equality, “[t]he programs impacted by this rule are lifesaving for transgender people, particularly youth rejected by their families, and a lack of stable housing fuels the violence and abuse that takes the lives of many transgender people of color across the country.”

The proposal also unreasonably permits shelter providers and residents’ religious beliefs to justify excluding transgender individuals from housing. HUD previously concluded that the exclusion of transgender individuals and families with transgender members from HUD-funded shelters “is inconsistent with HUD’s mission to ensure decent housing and a suitable living environment for all.” HUD emphasized that it is inappropriate to exclude, isolate, or ostracize individuals because of their gender identity in order to accommodate others’ religious beliefs, just as HUD would not tolerate religious beliefs dictating the exclusion of individuals on the basis of race, color, national origin, or disability. HUD rightly concluded that the federal government should not fund shelters that are unwilling to serve all of those in need.

The rule change will also make shelter access inconsistent across the country. Many of our states and jurisdictions prohibit discrimination based on gender identity in homeless shelters.⁵ But most states *lack* explicit protections.⁶ And according to a survey, states without LGBT protections were far more likely to turn transgender women away.⁷ HUD’s Equal Access Rule ensures transgender and gender nonconforming individuals have equal and consistent access to shelters nationwide. Under HUD’s new proposal, access may vary widely from jurisdiction to jurisdiction and even from shelter to shelter.

The Equal Access Rule has functioned well in the relatively short time it has been in effect, and we see no rationale for amendment or rescission. In the media, HUD has principally identified safety concerns as animating a need for change. But tellingly the proposal seems to allow providers to implement virtually any policy, which does little to enhance safety in shelters. The current rule ensures *all* individuals have access to safe housing. We urge you to keep the 2016 amendment to the Equal Access Rule in place.

⁴ Rishita Apsani, *Are Women’s Spaces Transgender Spaces? Single-Sex Domestic Violence Shelters, Transgender Inclusion, and the Equal Protection Clause*, 106 CAL. L. REV. 1689 (2018) (citing *GLBT Domestic Violence Coal. & Jane Doe Inc., Shelter/Housing Needs for Gay, Lesbian, Bisexual and Transgender (GLBT) Victims of Domestic Violence* (2005)).

⁵ MODEL POLICY & LEGAL GUIDE FOR HOMELESS SHELTERS & HOUSING PROGRAMS 9 (2016) (noting that in 2016 17 states and the District of Columbia barred the denial of shelter to transgender and gender nonconforming individuals on the basis of their gender identity or expression as a discriminatory act in violation of state law), available at <http://transgenderlawcenter.org/wp-content/uploads/2016/02/03.09.2016-Model-Homeless-Shelter-TG-Policy-single-pages.pdf> (last visited June 28, 2019).

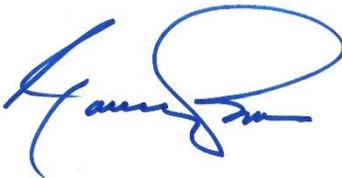
⁶ *Id.*

⁷ Caitlin Rooney, Laura E. Durso & Sharita Gruberg, *Discrimination Against Transgender Women Seeking Access to Homeless Shelters*, THE CENTER FOR AMERICAN PROGRESS (Jan. 7, 2016, 9:06 am), available at <https://www.americanprogress.org/issues/lgbt/reports/2016/01/07/128323/discrimination-against-transgender-women-seeking-access-to-homeless-shelters/> (last visited June 28, 2019).

Respectfully,



KWAME RAOUL
Attorney General
State of Illinois



XAVIER BECERRA
Attorney General
State of California



PHILIP J. WEISER
Attorney General
State of Colorado



WILLIAM TONG
Attorney General
State of Connecticut



KATHLEEN JENNINGS
Attorney General
State of Delaware



CLARE E. CONNORS
Attorney General
State of Hawai'i



TOM MILLER
Attorney General
State of Iowa

Dana Nessel *Josh Stein*

DANA NESSEL
Attorney General
State of Michigan

JOSHUA H. STEIN
Attorney General
State of North Carolina

Ellen F. Rosenblum

ELLEN F. ROSENBLUM
Attorney General
State of Oregon

Josh Shapiro

JOSH SHAPIRO
Attorney General
Commonwealth of Pennsylvania

Peter F. Neronha

PETER F. NERONHA
Attorney General
State of Rhode Island

Thomas J. Donovan, Jr.

THOMAS J. DONOVAN, JR.
Attorney General
State of Vermont

Mark R. Herring

MARK R. HERRING
Attorney General
Commonwealth of Virginia

Bob Ferguson

BOB FERGUSON
Attorney General
State of Washington

Joshua L. Kaul

JOSHUA L. KAUL
Attorney General
State of Wisconsin