



December 19, 2019

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

Submitted via regulations.gov

RE: Comments on Health and Human Services Grants Regulation Proposed Rule
RIN 0991-AC16

Dear Secretary Azar,

Equality North Carolina writes today to comment in response to the Health and Human Services (“HHS”) Grants Regulation Proposed Rule (“Rule”). Equality North Carolina is the oldest statewide organization in the country dedicated to securing rights and protections for the lesbian, gay, bisexual, transgender and queer (LGBTQ) community. We are invested in ensuring that every North Carolinian can see themselves in this movement, and in helping create a safer, more equitable world for all marginalized people.

Equality North Carolina strongly opposes the Rule and urges its withdrawal. The LGBTQ community is estimated to comprise about 4 percent¹ of North Carolina’s 10.4 million residents.² The Rule will be especially harmful to these 419,000 LGBTQ residents, 26 percent of whom reside in households with children.³ If the Rule were to become final, LGBTQ people’s and families’ access to many HHS programs of social services and health care would be threatened by the federal government’s promotion of discrimination, and the resulting confusion among program beneficiaries about what their rights are and among grantees about what their obligations are. Under this rule, LGBTQ people could be turned away from senior centers, health clinics, child care and nutrition programs, and services for people experiencing homelessness, all while still receiving federal funds. The rule would also enable discrimination against women, religious minorities, and survivors of intimate partner violence in many programs. For these reasons, Equality North Carolina urges HHS to withdraw the Rule.

¹ LGBT Demographic Data Interactive. (January 2019). Los Angeles, CA: The Williams Institute, UCLA School of Law, available at: <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT&area=37#about-the-data>

² Tippett, Rebecca, “NC is rapidly growing” (October 3, 2019, Carolina Demography), available at:

<https://www.ncdemography.org/2019/10/03/nc-is-rapidly-growing-where-are-our-new-residents-moving-from/>

³ See supra note 1.

Securing equal rights and justice for lesbian, gay, bisexual, transgender, and queer North Carolinians

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The Rule would threaten the safety, permanency, and well-being of LGBTQ youth

While North Carolina does not currently collect data on the sexual orientation, gender identity, and gender expression (“SOGIE”) of youth in its child welfare system, national estimates suggest that an estimated 20 percent of youth in care identify as LGBTQ.⁴ Thus, we expect that, of the estimated 10,400 North Carolinian young people in care,⁵ approximately 2,000 are, or may later, identify as LGBTQ. LGBTQ youth are over-represented in child welfare systems across the country.⁶ For some LGBTQ adolescents in care, their sexual orientation or gender identity and/or expression is the reason they may be living out of the home. Families hostile to their child’s LGBTQ identity may have rejected, abused, or neglected them, causing them to enter the child welfare system in the first place. LGBTQ adolescents report high levels of victimization⁷ related to the social stigma and harassment they face from their peers and adults in their lives.⁸

Many LGBTQ youth have experienced significant trauma before entering care and are then subjected to additional harm within a system that is supposed to protect and assist them. LGBTQ youth routinely experience harassment and abuse in the child welfare system. This includes harassment and victimization from peers and may include sexual abuse. Unfortunately, this discrimination, harassment, and abuse may be at the hands of child welfare staff and foster parents. Caseworkers may believe that young LGBTQ people in the system are harder to place in permanent settings or reunify with families, which results in many LGBTQ youth emancipating from care without lifelong connections. Youth in care may be subjected to coercive and harmful “conversion” therapy that attempts to change their SOGIE,⁹ isolated from other young people in congregate care settings, or cycled through multiple foster homes after unsuitable placements are recognized as a poor fit. Because of such treatment, many LGBTQ youth feel forced to hide their SOGIE in order to survive. Others, unable to hide, may run away from their placements and end up on the streets.¹⁰

Transgender youth often suffer especially poor treatment in child welfare systems.¹¹ These young people are regularly targeted for harassment and assault, denied necessary medical treatment, given sex-segregated room assignments or congregate care placements inconsistent with their gender identities, called by names assigned at birth rather than names they use, and forced to dress in ways

⁴ Bianca D.M. Wilson, et al., *Sexual & Gender Minority Youth in Los Angeles Foster Care* (The Williams Inst. 2014), https://williamsinstitute.law.ucla.edu/wp-content/uploads/LAFYS_report_final-aug-2014.pdf.

⁵ Children’s Bureau, *Trends in Foster Care and Adoption*, Office of the Administration for Children and Families (Oct. 2017), <https://www.acf.hhs.gov/cb/resource/trends-in-foster-care-and-adoption>.

⁶ U.S. Dep’t of Health & Human Servs., Admin. on Children, Youth & Families, Information Memorandum ACYF-CB-IM-11-03, *Lesbian, Gay, Bisexual, Transgender and Questioning Youth in Foster Care* (Apr. 6, 2011). See also Shannan Wilber, Caitlin Ryan & Jody Marksamer, *CWLA Best Practice Guidelines for Serving LGBT Youth in Out-of-Home Care 1* (2006); Child Welfare League of Am. & Lambda Legal, *Getting Down to Basics: Tools to Support LGBTQ Youth in Care* (2010) [hereinafter *Getting Down to Basics*].

⁷ See Nat’l Gay & Lesbian Task Force Policy Inst. & Nat’l Coal. for the Homeless, *Lesbian, Gay, Bisexual and Transgender Youth: An Epidemic of Homelessness* (2006), [hereinafter *LGBT Youth: An Epidemic of Homelessness*].

⁸ See Child Welfare League of Am. & Lambda Legal, *Out of the Margins: A Report on Regional Listening Forums Highlighting the Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Youth in Care 2-3* (2006).

⁹ Nat’l Ass’n of Soc. Workers, *“Reparative” and “Conversion” Therapies for Lesbians and Gay Men* (2000); Am. Psychological Ass’n, *Appropriate Therapeutic Responses to Sexual Orientation* (2009).

¹⁰ *LGBT Youth: An Epidemic of Homelessness*, supra note 7, at 11-23.

¹¹ *Getting Down to Basics*, supra note 6, Working with Transgender Youth.

that are inconsistent with their gender expression.¹² Such treatment is unsafe, harmful, and can have serious immediate and lasting effects and repercussions.

However, we know that if given appropriate support, acceptance, and access to coping strategies, young LGBTQ people demonstrate high levels of resilience and positive outcomes.¹³ But, if LGBTQ youth are given little or no support by caregivers and child welfare professionals, they face poor prospects of successfully transitioning to adult life, and face elevated health and behavioral risks compared to their non-LGBTQ peers.¹⁴ Finalizing the Rule would not only miss opportunities to help provide more support to these vulnerable young people and promote positive outcomes—it would promote discrimination and further negative outcomes.

LGBTQ patients' access to critical safety net programs and care would be threatened

Discrimination against LGBTQ individuals in health care remains a pervasive problem. Despite recent advances in legal protections for LGBTQ individuals, the estimated 419,000 LGBTQ people living in North Carolina continue to regularly encounter discrimination on the basis of sexual orientation and gender identity when seeking health care.

Numerous surveys, studies, and reports have documented the widespread extent of the discrimination experienced by LGBTQ individuals and their families in the health system. The study “When Health Care Isn’t Caring,” a nationwide survey assessing the health care experiences of LGBTQ people and people living with HIV, found that the majority of the almost 5,000 respondents reported experiencing at least one of the following types of discrimination: health care providers blaming them for their health status; refusing to touch them or using excessive precautions; using harsh or abusive language; and being physically rough or abusive.¹⁵ In the same study, 10 percent of LGB respondents and 25 percent of transgender respondents reported being refused needed medical care outright.

Similarly, the 2015 U.S. Transgender Survey, the largest survey ever devoted to the lives and experiences of transgender people, found pervasive discrimination in health care among its nearly 28,000 transgender respondents within the previous year, including large numbers who had been denied coverage for transition-related care and other necessary treatments because of being transgender; being harassed, attacked, or turned away by health care providers; and postponing needed medical care because of fear of mistreatment by providers.¹⁶

In a report specifically examining the experiences of respondents living in North Carolina, the U.S.

¹² See *id.*; Jody Marksamer et al., *A Place of Respect: A Guide for Group Care Facilities Serving Transgender and Gender Non-Conforming Youth* (Spring 2011) [hereinafter *A Place of Respect*].

¹³ See *LGBT Youth: An Epidemic of Homelessness* 84-85 (2006) (crediting “programs established to work specifically with LGBT homeless youth” with helping clients “feel good about [their] emerging identit[ies]” and saving clients’ lives, “getting [them] off drugs, into safe housing and reconnected with [their] famil[ies]”); Caitlin Ryan et al., *Family Acceptance in Adolescence and the Health of LGBT Young Adults*, 23 *J. Child Adolescent Psychiatric Nursing* 205, 213 (2010) (“Family acceptance predicts greater self-esteem, social support, and general health status; it also protects against depression, substance abuse, and suicidal ideation and behaviors.”).

¹⁴ See *LGBT Youth: An Epidemic of Homelessness*, *supra* note 7, at 41-82.

¹⁵ Lambda Legal, *When Health Care Isn’t Caring: Lambda Legal’s Survey on Discrimination Against LGBT People and People Living with HIV* (2010), available at: <http://www.lambdalegal.org/publications/when-health-care-isnt-caring>.

¹⁶ S.E. James et al., *2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality, available at: <http://www.ustranssurvey.org/report>.

Transgender Survey found that:¹⁷

- 29 percent of respondents living in North Carolina were living in poverty;
- In the past year, 29 percent of those who saw a health provider had at least one negative experience related to being transgender, such as being harassed, physically assaulted, or turned away; and
- In the past year, 42 percent did not see a doctor when they needed to because they could not afford it.

These encounters with discrimination and lack of access have serious negative consequences for the health and well-being of LGBTQ individuals. They also exacerbate the significant health disparities that affect the LGBTQ population at large. Sources such as the Institute of Medicine,¹⁸ the Centers for Disease Control and Prevention, and Healthy People 2020¹⁹ have found that discrimination threatens the health of the LGBTQ population in ways that include:

- Increasing risk factors for poor physical and mental health such as smoking and other substance use;²⁰
- Driving high rates of HIV among transgender women and gay and bisexual men;²¹
- Obstructing access to preventive screenings;²² and
- Putting LGBTQ people at risk of poor treatment from health care providers who are unprepared to meet the needs of LGBTQ patients.²³

Many of these disparities are even greater for LGBTQ youth, LGBTQ elders, and LGBTQ people who are also members of other groups disadvantaged because of their race, ethnicity, primary language, disability, or other aspects of their identity.²⁴

Health clinics and programs have helped to stem some of the LGBTQ health disparities mentioned above. But if clinics and health care programs are encouraged by HHS to discriminate on the basis of

¹⁷ 2015 U.S. Transgender Survey: North Carolina State Report. (2017). Washington, DC: National Center for Transgender Equality, available at:

http://www.transequality.org/sites/default/files/docs/usts/USTS_NC_state_report.pdf.

¹⁸ See, e.g., Institute of Medicine, *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* (2011), available at:

<http://www.iom.edu/Reports/2011/The-Health-of-Lesbian-Gay-Bisexual-and-Transgender-People.aspx>.

¹⁹ U.S. Department of Health and Human Services, *Healthy People 2020: LGBT Health Topic Area* (2015), available at: <http://www.healthypeople.gov/2020/topics-objectives/topic/lesbian-gay-bisexual-and-transgender-health>.

²⁰ Centers for Disease Control and Prevention, *Lesbian, Gay, Bisexual, and Transgender Health* (July 2014), available at: <http://www.cdc.gov/lgbthealth/about.htm>.

²¹ Office of National AIDS Policy, *National HIV/AIDS Strategy* (2015), available at:

<https://www.whitehouse.gov/administration/eop/onap/nhas>.

²² Fenway Institute, *Promoting Cervical Cancer Screening Among Lesbians and Bisexual Women* (2013), available at: http://www.lgbthealtheducation.org/wp-content/uploads/Cahill_PolicyFocus_cervicalcancer_web.pdf.

²³ See supra note 15.

²⁴ Institute of Medicine, supra note 18; Center for American Progress, “Health Disparities in LGBT Communities of Color: By the Numbers” (2010), available at <https://www.americanprogress.org/issues/lgbt/news/2010/01/15/7132/health-disparities-in-lgbt-communities-of-color>.

sexual orientation and gender identity, health outcomes would worsen, not improve. Because North Carolina does not have explicit state protections from discrimination on the basis of sexual orientation or gender identity, the Rule will be particularly harmful for LGBTQ North Carolinians, who will have to seek legal action to be able to exercise their rights. The Rule would exacerbate health disparities and discrimination that LGBTQ people face in accessing health care, and potentially dissuade them from seeking health care altogether.

The Rule will promote discrimination against women, religious minorities, and survivors of intimate partner violence in critical programs

The elimination of protection from discrimination based on sex, religion, and other non-merit factors, such as being a survivor of intimate partner violence, could hurt people in need in North Carolina. We work with the North Carolina Coalition Against Sexual Assault as well as the North Carolina Coalition Against Domestic Violence, who regularly call us about survivors facing discrimination from domestic violence service providers and from shelters. Sex, religion, sexual orientation, and gender identity should never cause someone who is eligible and in need of help to be turned away from federally-funded assistance.

Thank you for the opportunity to comment on HHS Grants Regulation Proposed Rule. We once again urge HHS to withdraw this Rule.

If you have any questions about our comments and recommendations, please contact Ames Simmons at ames@equalitync.org.

Sincerely,



Ames Simmons, JD
Policy Director
Equality North Carolina