



December 19, 2019

Submitted via the Federal eRulemaking Portal

The Honorable Alex M. Azar II  
Secretary  
Department of Health and Human Services  
Hubert H. Humphrey Building, Room 514-G  
200 Independence Avenue SW  
Washington, DC 20201

Re: RIN 0991-AC16, Office of the Assistant Secretary for Financial Resources; Health and Human Services Grants Regulation

Dear Secretary Azar:

We are writing on behalf of the HIV Health Care Access Working Group (“HHCAGW”) – a coalition of over 100 national and community-based HIV service organizations representing HIV medical providers, public health professionals, and advocates, and people living with HIV, who are all committed to ensuring access to critical HIV-related health care and support services. We appreciate the opportunity to provide comments to the Department of Health and Human Services (“HHS”) on RIN 0091-AC16 (“Proposed Rule”), which proposes to revise certain regulations relating to the administration of HHS grants.

We are deeply concerned that the Proposed Rule will threaten people’s access to important social service programs, many of which provide HIV preventive services and address the social determinants of health and health-related social needs. Such programs address issues such as HIV testing, food insecurity, and housing, and often meet the specific needs of individuals living with and at risk of HIV.<sup>1</sup> To fully commit to the president’s goal of ending the HIV epidemic, the federal government must ensure that

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<sup>1</sup> AIDS UNITED & ACT NOW: END AIDS, ENDING THE HIV EPIDEMIC IN THE UNITED STATES: A ROADMAP FOR FEDERAL ACTION 40-62 (2018), available at <https://www.aidsunited.org/resources/ending-the-hiv-epidemic-in-the-us>.

everyone, regardless of sexual orientation, gender identity, or other non-merit factors, can access the support they need to improve their health and well-being.

Without explicit protections in HHS' central nondiscrimination regulations, programs that receive federal funding, such as HIV and sexually transmitted infection prevention programs, community meal programs, and senior services programs, may be emboldened to close their doors and refuse services to lesbian, gay, bisexual, transgender, and queer ("LGBTQ") people. Nondiscrimination provisions, like that which HHS declared it no longer enforces and proposes to revise, are vital to ensuring a broad spectrum of protections for people who have historically faced discrimination. The 2016 final rule (published in the Federal Register at 81 FR 89393 (Dec. 12, 2016)) includes explicit protections against discrimination based on sex, religion, and other non-merit factors. By applying and enforcing the 2016 final rule to its grant-funded programs, HHS can ensure that the benefits of such services are had by all and that health disparities are not further exacerbated by systematic and sanctioned discrimination.<sup>2</sup>

We note that HHS has failed to provide any reasonable justification for its proposed rule and notice of nonenforcement.<sup>3</sup> Additionally, HHS has failed to fully consider or weigh the impact the Proposed Rule would have on vulnerable populations and their access to HHS-funded programs. As we noted in our previous comments regarding "Nondiscrimination in Health and Health Education Programs or Activities," the impact of rolling back explicit nondiscrimination protections fall heaviest on those least able to seek services elsewhere, including but not limited to LGBTQ people living in rural areas, LGBTQ people living in states without adequate nondiscrimination protections, LGBTQ people living with chronic illnesses and disabilities, and LGBT people of color who already face harassment and discrimination regularly.<sup>4</sup> Access to HHS-funded programs is particularly important for the LGBTQ population, as research continues to show how LGBTQ communities experience higher rates of poverty, food insecurity, instable housing, and elder isolation.<sup>5</sup> Many members of HHCAWG who work at or with community health

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<sup>2</sup> Early-education and nutritional support (particularly meal delivery services that are medically-tailored) can have a positive impact on health-related outcomes. See, e.g. Martha Abbott-Shim, et al., *A Comparison of School Readiness Outcomes for Children Randomly Assigned to a Head Start Program and the Program's Wait List*, 8 J EDUC. FOR STUDENTS PLACED AT RISK 191 (2003); Larry Buhl, *To Treat Chronic Ailments, Fix Diet First*, New York Times (2019), <https://www.nytimes.com/2019/10/22/opinion/chronic-illness-diet.html>.

<sup>3</sup> HHS merely cites to a preliminary injunction in a pending court case in Michigan. See 84 Fed. Reg. 63832, citing to *Buck v. Gordon*, No. 1:19-CV-286, 2019 U.S. Dist. LEXIS 165196 (W.D. Mich. Sep. 26, 2019).

<sup>4</sup> Please see HHCAWG's comments in response to RIN 0945-AA11, available here: <https://www.chlpi.org/wp-content/uploads/2013/12/HHCAWG-1557-Comments-8-13-2019.pdf>. See also MOVEMENT ADVANCEMENT PROJECT, *WHERE WE CALL HOME: LGBT PEOPLE IN RURAL AMERICA* (2019), <http://www.lgbtmap.org/file/lgbt-rural-report.pdf>.

<sup>5</sup> See, e.g., THE WILLIAMS INSTITUTE, *FOOD INSECURITY AND SNAP PARTICIPATION IN THE LGBT COMMUNITY* (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Food-Insecurity-and-SNAP-Participation-in-the-LGBT-Community.pdf>; INSTITUTE OF MEDICINE, *THE HEALTH OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER PEOPLE: BUILDING A FOUNDATION FOR BETTER UNDERSTANDING* (2011); Caitlin Rooney, et al., *Protecting Basic Living Standards for LGBTQ People*, CENTER FOR AMERICAN PROGRESS (AUG. 13, 2018), <https://www.americanprogress.org/issues/lgbtq-rights/reports/2018/08/13/454592/protecting-basic-living-standards-lgbtq-people/>; SAGE, *AGING AND THE LGBT COMMUNITY* (2019), <https://www.sageusa.org/wp-content/uploads/2019/03/aging-and-the-lgbt-community.pdf>; SAGE,

centers and social service programs know that LGBTQ people often travel hours or days to access nondiscriminatory services. The non-enforcement of the 2016 final rule and the Proposed Rule if finalized will further limit available options where people can feel safe obtaining the support they need.

Thank you for the opportunity to comment on the Proposed Rule. We strongly oppose the Proposed Rule and request that HHS resume enforcing the existing regulations. We direct HHS to each of the sources cited, and we request that the full text of each source, along with the full text of our comments be considered part of the administrative record in this matter for purposes of the Administrative Procedure Act.

Please contact Phil Waters at [pwaters@law.harvard.edu](mailto:pwaters@law.harvard.edu) with the Treatment Access Expansion Project or Amy Killelea at [akillelea@nastad.org](mailto:akillelea@nastad.org) with the National Alliance of State and Territorial AIDS Directors if we can be of assistance.

Respectfully submitted by:

ADAP Educational Initiative | AIDS Alabama | AIDS Action Baltimore | AIDS Alliance for Women, Infants, Children, Youth & Families | AIDS Foundation of Chicago | AIDS Research Consortium of Atlanta | AIDS United | American Academy of HIV Medicine | APLA Health | Bailey House, Inc. | Black AIDS Institute | Communities Advocating Emergency AIDS Relief (CAEAR) | Community Access National Network (CANN) | Georgia AIDS Coalition | Harm Reduction Coalition | HealthHIV | HIV Medicine Association | Housing Works | Legal Council for Health Justice | Michigan Positive Action Coalition | Minnesota AIDS Project | National Alliance of State and Territorial AIDS Directors | National Coalition for LGBT Health | National Latino AIDS Action Network | NMAC | Positive Health Solutions of the University of Illinois | Positive Women's Network - USA | San Francisco AIDS Foundation | SisterLove | Southern AIDS Coalition | The AIDS Institute | Treatment Access Expansion Project | Thrive Alabama | Treatment Action Group (TAG) | Vivent Health

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THE FACTS ON LGBT AGING (2018), <https://www.sageusa.org/wp-content/uploads/2018/05/sageusa-the-facts-on-lgbt-aging.pdf>.