

December 19, 2019

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

Jennifer Moughalian  
Acting Assistant Secretary for Financial Resources and  
Acting Chief Financial Officer  
U.S. Department of Health and Human Services  
Office of the Assistant Secretary for Financial Resources  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

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

Dear Secretary Azar and Acting Assistant Secretary Moughalian:

The Center for Medicare Advocacy (“Center”) appreciates this opportunity to comment on the Notice of proposed rulemaking (NPRM) to re-promulgate or revise certain regulatory provisions of the Department of Health and Human Services (HHS), Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards. The Center strongly opposes this proposed rule and urges the Department of Health and Human Services (HHS) to withdraw it as well as the accompanying notice of non-enforcement.

The Center, founded in 1986, is a national, non-partisan education and advocacy organization that works to ensure fair access to Medicare and to quality healthcare. At the Center, we educate older people and people with disabilities to help secure fair access to necessary health care services. We draw upon our direct experience with thousands of individuals to educate policy makers about how their decisions affect the lives of real people. Additionally, we provide legal representation to ensure that people receive the health care benefits to which they are legally entitled, and to the quality health care they need.

On November 1, 2019, HHS issued a Notice of Non-enforcement<sup>1</sup> stating that it would no longer enforce HHS regulations<sup>2</sup> that prohibit discrimination in taxpayer-funded programs and services based on gender identity, sexual orientation, sex, and (in certain instances) religion. On November 19, 2019, HHS published a proposed rule that would codify this policy, effectively

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<sup>1</sup> <https://www.hhs.gov/about/news/2019/11/01/hhs-issues-proposed-rule-to-align-grants-regulation.html>

<sup>2</sup> <https://www.federalregister.gov/documents/2016/12/12/2016-29752/health-and-human-services-grants-regulation>

permitting HHS grantees to discriminate on these grounds and refuse to serve people who belong to these protected groups.<sup>3</sup>

The proposed rule will affect many HHS grants and contracts—worth over \$500 billion—including outreach and enrollment activities for Medicaid and the Children’s Health Insurance Program (CHIP), foster care, HIV prevention, community health care centers, energy assistance, programs funded under the Violence Against Women Act, and more. Organizations and contractors receiving federal funding would be free to discriminate against LGBTQ people, persons of faith, and secular Americans, which will cause great harm to these people and populations, and provide little if any benefit to HHS.

Through our work with the Medicare program, we focus primarily on older adults and individuals with disabilities. The Center believes that all people, though - particularly those at the greatest economic, social, and medical risk, should have access to the services and supports that they need to remain independent—regardless of their gender identity, sexual orientation, sex, or religion. LGBT older people, in particular, already face pronounced social isolation, disproportionate rates of poverty, and a lack of access to culturally competent services and supports. Moreover, they experience discrimination and fear of discrimination in accessing services and supports, leading to significant health and economic disparities. Implementation of this proposed rule would exacerbate the challenges this population faces and reverse the progress our society has made towards equity.

The impact of the proposed rule on the Older Americans Act (OAA) and some HHS block grant programs (such as the Low-Income Home Energy Assistance Program, or LIHEAP) is of particular concern to advocates for older adults. HHS administers much of the funding from this \$1.6 billion program through grants to states and local entities; these grants support key services that enable older adults to age in place and live with dignity.

HHS-funded grant programs like senior centers, congregate meals, and adult daycare programs help older adults across the nation age with dignity, and without regard to the sexual orientation, gender identity, sex, or religion of the individuals seeking services. The federal government should be championing nondiscrimination protections, not advancing discrimination.

The foreseeable harm from this proposed rule is great. If it takes effect, HHS taxpayer-funded grantees would be allowed to deny a transgender older woman a congregate meal because of her gender identity; to deny an older lesbian tips on falls prevention simply because of her sexual orientation; to deny an older bisexual man the same caregiver supports as straight seniors; or to deny a same-sex couple energy assistance because of their relationship. Senior centers receiving taxpayer dollars could conceivably post a sign stating “No LGBT people may enter” or policies under which an OAA-funded transportation provider could preclude transgender older adults from riding in their van. Similarly, HHS-funded entities could be permitted to deny vital services on the basis of religion, such as denying an older Muslim woman a congregate meal or an older Jewish man treatment for opioid addiction. The notion that HHS-funded grantees could discriminate against any person because of their gender identity, sexual orientation, sex, or

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<sup>3</sup> <https://www.federalregister.gov/documents/2019/11/19/2019-24385/office-of-the-assistant-secretary-for-financial-resources-health-and-human-services-grants>

religion, is antithetical to the Center's core beliefs and to the American values of equality for all and freedom of religion that we so strongly support.

The proposed rule also comes at a time of increased occurrences of discrimination across the country. The proposed rule's weakening of current non-discrimination policy seems likely to embolden additional discriminatory practices. At a minimum, contrary to HHS's stated goal of simplicity in proposing these changes from current policy, implementation of the proposed rule would create additional and unnecessary confusion as to what activity is prohibited, what activity is not, and in which programs.

Therefore, the Center opposes this proposed rule. We strongly urge HHS to withdraw the proposed rule and return to enforcing current prohibitions against discrimination on any protected basis by all HHS grantees and in all HHS programs.

### **Conclusion**

We appreciate the opportunity to submit these comments. For additional information, please contact David Lipschutz, Senior Policy Attorney, [dlipschutz@MedicareAdvocacy.org](mailto:dlipschutz@MedicareAdvocacy.org) or Kata Kertesz, Policy Attorney, [kkertesz@MedicareAdvocacy.org](mailto:kkertesz@MedicareAdvocacy.org), both at 202-293-5760.