



March 26, 2018

Submitted via the Federal e-Rulemaking Portal

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

RE: HHS-OCR-2018-0002-0001 proposed rule

Dear Mr. Severino:

We are writing on behalf of the HIV Health Care Access Working Group to urge HHS to uphold its duty to “enhance the health and well-being of all Americans” by withdrawing the proposed rule on “Protecting Statutory Conscience Rights in Health Care; Delegations of Authority.” HHCAGW is a coalition of over 100 national and community-based HIV service organizations representing HIV medical providers, public health professionals, advocates, and people living with HIV who are all committed to ensuring access to critical HIV- and hepatitis C-related health care and support services.

We are deeply concerned that this rule would open the door wider to discrimination by physicians, nurses, and other professionals against people with HIV, people at risk for HIV and LGBTQ individuals. Federal resources must not be used to empower people to deny medical care, especially to those who have few options to obtain it. As HHS acknowledges, current law sufficiently protects the religious rights of providers.

While the stated intent of the proposed rule is to protect health care providers, we are concerned that the ultimate impact of the rule will be to compromise the health of individuals most in need of care, including people at risk for HIV and people living with HIV. Under the guise of civil rights protections, the rule will allow providers to disregard clinical standards of care when it comes to HIV prevention and treatment, putting patient safety and access at risk. Implementing this rule and actively sheltering discriminatory health providers will be a significant setback to progress made in responding to the HIV epidemic.

The stigma and discrimination experienced by people with HIV persists in many facets of their lives including in accessing health care services.ⁱ Despite the availability of highly effective prevention and treatment tools – 15 percent of people in the U.S. who are living with HIV are undiagnosed and just 50 percent of diagnosed individuals are fully benefiting from treatment (or virally suppressed).ⁱⁱ Improving access to effective treatment and increasing the number fully benefiting from treatment is important to

the health of people living with HIV and to reduce the spread of HIV. The risk of transmitting HIV is virtually zero when virally suppressed.

We highlight key areas of concern regarding the potential implications of the proposed rule below.

- **HIV Prevention:** Despite the availability of highly effective prevention tools including pre-exposure prophylaxis or (PrEP) -- a once-a-day pill recommended for individuals at higher risk for HIV – the number of new HIV infections is around 40,000 annually. Allowing providers to ignore CDC clinical guidelinesⁱⁱⁱ for use of PrEP and other HIV prevention interventions will hinder our efforts to reduce new HIV infections, particularly for populations most at risk for HIV including gay men and transgender individuals. Individuals who turn to health care providers for HIV and STD testing, PrEP, HIV treatment, or prevention and treatment for any communicable disease, should never be denied access to these services because of a provider’s religious beliefs. This is particularly important in underserved areas where health care provider access can be severely limited and travel to other providers can be prohibitive due lack of transportation and/or distance.
- **LGBTQ Care, Particularly Transgender Care:** LGBTQ individuals continue to face significant discrimination and stigma. Ensuring that this population has access to culturally competent and sensitive providers is critical to our efforts to address the HIV-related disparities faced by gay men and transgender individuals.^{iv v} Transgender individuals in particular are at high risk for HIV and have low rates of health coverage in the U.S.^{vi} In many jurisdictions, transgender patients are already denied gender-affirming and medically necessary care. Denying transgender individuals the gender-related medical care they need will lead to fear and distrust of health care providers and of the health care system leaving them even more vulnerable to HIV and less likely to learn they are HIV-positive, to access care, and to effectively manage their HIV. Provider shortages in many areas will leave transgender individuals without viable alternatives for preventive and health care services if their local provider denies care.
- **Women’s Health Care:** Women with HIV and all women have a right to reproductive health services including contraception and abortion. Granting health care providers and institutions the right to withhold medical information regarding prevention or treatment options or to deny women these services based on personal religious beliefs puts their health at risk.

For nearly two decades, HHCAWG has been advocating for expanding access to health coverage and health care services for people at risk for HIV and living with HIV to improve their health outcomes and to improve public health. Until recently, many people with HIV and the populations at higher risk for HIV, including gay men and transgender individuals, were denied health care coverage or the coverage available to them was priced out of reach. The Patient Protection and Affordable Care Act’s non-discrimination protections (Section 1557) have been critical to improving access to health care coverage and services for people with HIV. However, even with these protections, we continue to see health plans discourage enrollment of people with HIV through discriminatory benefit and formulary designs. These practices have been reported to the HHS Office of Civil Rights (OCR), which is charged with investigating complaints related to these practices. To date, there’s little evidence that enforcement of these protections is taking place. We urge OCR to focus its attention on challenging discriminatory practices that are impeding access to health care for people with HIV and others rather than defending health care providers who counter to their pledge to “do no harm” are denying individuals medically appropriate health care services.

We strongly urge HHS not to undermine the current non-discrimination protections that are making a difference in the lives of people at risk for HIV and living with HIV by providing health care providers the license to discriminate against patients based on their religious beliefs. Please withdrawal the proposed rule (HHS-OCR-2018-0002-0001 proposed rule) and commit to monitoring and enforcing existing non-discrimination protections to uphold HHS' mission of improving the health for all Americans, including people living with HIV, LGBT individuals and women.

Should you have any questions or need additional information, please contact HHCAWG co-chairs Robert Greenwald with the Treatment Access Expansion Project at rgreenwa@law.harvard.edu, Amy Killelea with the National Alliance of State and Territorial AIDS Directors at akillelea@NASTAD.org, or Andrea Weddle with the HIV Medicine Association at aweddle@hivma.org.

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 | AIDS Resource Center of Wisconsin | Bailey House, Inc. | Communities Advocating Emergency AIDS Relief (CAEAR) | Community Access National Network (CANN) | Equality California | Equality Federation | Georgia AIDS Coalition | Harm Reduction Coalition | HealthHIV | HIV Medicine Association | Housing Works | Legal Council for Health Justice | Los Angeles LGBT Center | Michigan Positive Action Coalition | Minnesota AIDS Project | National Alliance of State and Territorial AIDS Directors | National Latino AIDS Action Network | NMAC | Out2Enroll | Positive Women's Network - USA | Project Inform | Rocky Mountain CARES | San Francisco AIDS Foundation | SisterLove | Southern AIDS Coalition | Southern HIV/AIDS Strategy Initiative | The AIDS Institute | Treatment Access Expansion Project | Treatment Action Group |

ⁱ HIV.gov. Activities Combating HIV Stigma and Discrimination. <https://www.hiv.gov/federal-response/federal-activities-agencies/activities-combating-hiv-stigma-and-discrimination>. Accessed 3/22/18.

ⁱⁱ Centers for Disease Control and Prevention. HIV Continuum of Care, U.S., 2014, Overall and by Age, Race/Ethnicity, Transmission Route and Sex. July 2017.

ⁱⁱⁱ CDC. Pre-Exposure Prophylaxis For The Prevention of HIV Infection In The United States - 2014 A Clinical Practice Guideline. <https://www.cdc.gov/hiv/pdf/prepguidelines2014.pdf>.

^{iv} CDC. HIV Among Gay and Bisexual Men. <https://www.cdc.gov/hiv/group/msm/index.html>. Accessed 3/22/18.

^v Trinh, MH, et al. .Health and healthcare disparities among U.S. women and men at the intersection of sexual orientation and race/ethnicity: a nationally representative cross-sectional study. BMC Public Health. 2017 Dec 19;17(1):964.

^{vi} CDC. HIV Among Transgender People. <https://www.cdc.gov/hiv/group/gender/transgender/index.html>. Accessed 3/22/18.