

# EQUALITY CALIFORNIA



March 27, 2018

U.S. Department of Health and Human Services  
Office for Civil Rights  
Attention: Conscience NPRM, RIN 0945-ZA03  
Washington, D.C. 20201

## **RE: Public Comment in Response to the Proposed Regulation, Protecting Statutory Conscience Rights in Health Care RIN 0945-ZA03**

To Whom It May Concern:

On behalf of Equality California and our 800,000 members, we appreciate the opportunity to submit comments regarding the Department of Health and Human Services (HHS)'s proposed "Protecting Statutory Conscience Rights in Health Care" rule.

Equality California is the nation's largest statewide lesbian, gay, bisexual, transgender and queer (LGBTQ) civil rights organization and is dedicated to creating a fair and just society. We work within California, at the Federal level, and directly with other states to win and protect full equality for LGBTQ people through education, electoral, advocacy and mobilization programs to achieve our mission.

In its request for public comments, HHS stated that the reason for the proposed "Protecting Statutory Conscience Rights in Health Care" rule is "to ensure that persons or entities" who are responsible for patient care "are not subjected to certain practices or policies that violate conscience, coerce, or discriminate."

But the concern of HHS should not lie in helping medical institutions, insurance companies and individuals engaged in patient care to cite their "personal beliefs" or "conscience" in order to facilitate their ability to deny needed services to people of whom they disapprove.

On the contrary, HHS should be concerned with ensuring that medical providers provide health care to all people, particularly the most vulnerable and medically-fragile. Equality California believes that healthcare should be based on medical best practices and the needs of the patient – not the personal, moral or religious beliefs of the hospital or clinic, insurance company or individual that is providing health services. For this reason, we write to strongly urge HHS and its newly-established Office of Conscience and Religious Freedom (OCR) to withdraw the proposed rule in its entirety.

### **Impact of the Proposed Rule on LGBTQ People**

While LGBTQ people face many of the same health conditions as the general public, we are profoundly impacted by discrimination, bullying, violence, rejection by families and communities, and lack of acceptance in employment and housing. Those who are

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transgender, living with HIV and AIDS, and of color are some of the most vulnerable in the United States.

Economic inequalities aggravate this cycle of discrimination — the LGBTQ poverty rate is double that of the general population and 16 times higher for transgender people. Nearly 90 percent of the nearly 130,000 LGBTQ Californians who buy health insurance get federal financial assistance to pay their Covered California premiums.

### **Impact of the Proposed Rule on LGBTQ Families and Youth**

Millions of LGBTQ households have children under the age of 18 and rely on high-quality, non-discriminatory access to healthcare.

There have been numerous examples of children with same-sex parents being denied treatment or experiencing delays over objections regarding the patients' 'real' parents.

Foster youth and the parents of foster youth often encounter resistance in securing reproductive health services for themselves or their children, including birth control, testing or treatment for sexually transmitted infection, and abortion care. Studies have shown that girls in foster care are twice as likely as those not in foster care to have sex and less likely to use birth control, making them far more likely to become parents themselves.

Foster youth are also far likely to have experienced sexual violence. Girls are twice as likely as boys to be removed from their homes and placed in foster care because of sexual abuse, and it is critical that they receive timely, unimpeded access to a full range of reproductive health care services that is delivered by medical professionals in a culturally-competent and non-traumatizing setting.

Arguably the most vulnerable of all are homeless LGBTQ youth, who are at acute risk of sexual abuse and assault, violence, depression and overall poorer health. Their connections with healthcare providers — already irregular and uncoordinated — would be tremendously impacted if they were to encounter hostile or indifferent medical providers who cited their religious beliefs in turning them away. It is safe to assume that traumatized youth would be unlikely to seek alternative providers.

### **Impact of the Proposed Rule on LGBTQ Older People**

The nation's LGBTQ senior population is expected to double by 2030, as the baby boomer generation ages. LGBTQ older adults spent much of their early years in a climate of widespread discrimination, harassment, rejection and anti-LGBTQ violence.

The combined impact of stigma and prejudice -- both past and present -- affects LGBTQ seniors' overall health and outlook. LGBTQ seniors are often isolated because they are less likely to have adult children to look out for them and are more likely to have lost a significant part of their social network during the HIV/AIDS epidemic and therefore lack the support networks that help with aging.

According to AARP's just-released 'Maintaining Dignity: A Survey of LGBT Adults Age 45 and Older' report, gay men are more likely than lesbians to be single, live alone, and

have smaller support systems, which may put them at higher risk for isolation as they age. Transgender adults also report smaller support systems and are at an increased risk of isolation, while bisexuals are least likely to be “out” within health systems.

The 2018 AARP report also found that “majorities of LGBTQ seniors cite concerns about neglect, abuse, refused access to services, or harassment. The possibility of being forced to hide one’s identity as a condition of receiving care is a concern for just under half of lesbian, gay and bisexual respondents and for 70% of transgender respondents.

Another landmark study was produced by The Movement Advancement Project and SAGE, ‘Understanding Issues Facing LGBT Older Adults.’ According to this study, 25% of transgender older adults said they had faced discrimination based on their gender identity and much higher rates of psychological distress than their non-transgender peers and more than half fear they will be denied medical care as they age and subjected to discrimination by healthcare providers. An appalling 50% live at 200% of the federal poverty line or even lower.

Older LGBTQ people, many of whom are already isolated, low-income, depressed and poor -- and especially those who are also black and Latino-- are acutely vulnerable to being denied services from medical providers who cited their moral objections to providing treatment. For many of these people, finding alternative viable providers would be profoundly difficult.

#### **Impact of the Proposed Rule on LGBTQ People in Rural Areas**

LGBTQ people who live in population-sparse areas often live hours away from a healthcare facility, especially those providing specialized care like fertility treatments, endocrinology, HIV treatment or prevention. The American College of Obstetrics and Gynecologists found that more than half of rural women live more than 30 minutes away from a hospital that provides basic obstetric care.

A January 2018 report by the Center for American Progress found that nearly 20% of LGBTQ people, including 31% of transgender people, said that it would be very difficult or impossible to get the health care they need at another hospital if they were turned away. That rate was substantially higher for LGBTQ people living in non-metropolitan areas, with 41% reporting that it would be very difficult or impossible to find an alternative provider.

These compounding factors mean that LGBTQ people, women, people with HIV and AIDS, other vulnerable communities and those in rural areas already encounter significant barriers to accessing high-quality non-discriminatory care. If they are turned away or outright denied treatment, they may well not have a viable alternative. Nor would the impact be limited to the patients themselves and their families; treatable communicable infections, such as STDs and HIV can spread to the surrounding communities.

#### **The Proposed Rule is Dangerously Overbroad**

The proposed HHS rule is overbroad and unclear. Because of the lack of clearly-set limitations, medical institutions, insurance companies and individuals could assert

religious or moral objections to not only sterilization and abortion procedures, but possibly to any health care service or even the provision of information about Pre-Exposure Prophylaxis (PrEP, the once-a-day pill recommended for individuals at higher risk for HIV), HIV treatment, sexually-transmitted infections, gender dysphoria, infertility care, drug addiction, and hormone treatment.

But that is not to imply that the denial of services related to sterilization is academic or tangential to the health and wellbeing of LGBTQ people. On the contrary – medical treatment for transgender people, such as hormone or surgical treatment for gender dysphoria, often has an impact on fertility, and can result in temporary or permanent sterilization.

**The Proposed Rule is Dangerously Vague**

The proposed rule would allow for virtually anyone to delay or obstruct medical care, in that it allows people who are “assisting in the performance” of a procedure could cite objections, even if they have only a glancing connection to service, such as a scheduler or a lab technician.

In conclusion, Equality California opposes the proposed rule on the grounds that it would likely have a dramatic and lasting impact on the lives and wellbeing of LGBTQ people and those living with HIV and AIDS, its text is overbroad and vague which would likely lead to abuse, and it subverts medical ethics which is anchored in compassionate care for patients.

We urge HHS to reject the Conscience Rule in its entirety.

Sincerely,



Valerie Ploumips  
National Policy Director  
Equality California