

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

WHITMAN-WALKER CLINIC, INC., *et al.*,

*Plaintiffs,*

v.

U.S. DEPARTMENT OF HEALTH AND  
HUMAN SERVICES, *et al.*,

*Defendants.*

Case No. 1:20-cv-1630

**DECLARATION OF HECTOR VARGAS, EXECUTIVE DIRECTOR, GLMA**

I, Hector Vargas, hereby state as follows:

1. I am the Executive Director of the American Association of Physicians for Human Rights, Inc., d/b/a GLMA: Health Professionals Advancing LGBTQ Equality (f/k/a the Gay & Lesbian Medical Association) (“GLMA”).

2. I received my Bachelor of Arts degree in political science and Spanish in 1989 and law degree in 1993 from the University of Georgia. I served on the Health Disparities Subcommittee of the Advisory Committee to the Director of the U.S. Centers for Disease Control and Prevention (CDC) and served for four years on President Obama’s Advisory Commission on Asian Americans and Pacific Islanders. I have more than 20 years of LGBTQ and civil rights advocacy experience, including on staff with Lambda Legal, the National LGBTQ Task Force, and the American Bar Association’s Section of Civil Rights and Social Justice.

3. I am submitting this Declaration in support of Plaintiffs’ motion for preliminary injunction to prevent the revised regulation under Section 1557 of the Affordable Care Act (“ACA”), published by the U.S. Department of Health and Human Services (“HHS”) on June 19,

2020 (the “Revised Rule”), from taking effect. The Revised Rule eliminates explicit regulatory protections for LGBT people in health care that were included in the 2016 Final Rule, which was promulgated under Section 1557 in May 2016.

4. GLMA is a 501(c)(3) national membership nonprofit organization based in Washington, D.C., and incorporated in California. GLMA’s mission is to ensure health equity for lesbian, gay, bisexual, transgender, queer (LGBTQ) people and all sexual- and gender- minority (SGM) individuals, and equality for LGBTQ/SGM health professionals in their work and learning environments. To achieve this mission, GLMA utilizes the scientific expertise of its diverse multidisciplinary membership to inform and drive advocacy, education, and research. GLMA was founded in 1981 and its initial mission focused on responding with policy advocacy and public-health research to the growing medical crisis that would become the HIV/AIDS epidemic. Since then, GLMA’s mission has broadened to address the full range of health concerns and issues affecting LGBTQ/SGM people, including ensuring that sound science and research inform health policy and practices regarding the LGBTQ community.

5. GLMA represents the interests of hundreds of thousands of LGBTQ health professionals, as well as millions of LGBTQ patients and families. GLMA’s membership includes approximately 1,000 member physicians, nurses, advanced practice nurses, physician assistants, researchers and academics, behavioral health specialists, health profession students and other health professionals. GLMA’s members reside and work across the United States, including states without any explicit protections against discrimination based on sexual orientation, gender identity, or transgender status, and in several other countries. Their practices represent the major health care disciplines and a wide range of health specialties, including internal medicine, family

practice, psychiatry, pediatrics, obstetrics/gynecology, emergency medicine, neurology, and infectious diseases.

6. GLMA’s members who work for covered entities under Section 1557 are protected from discrimination with regards to terms and conditions of their employment, such as employee health benefits, pursuant to the 2016 Final Rule. In addition, many of GLMA’s members are or work for covered entities subject to the Revised Rule.

7. The Revised Rule invites confusion about the meaning of the sex discrimination provision of Section 1557 of the ACA and directly conflicts HHS’s previous guidance regarding the meaning of sex discrimination. In 2012, HHS Office of Civil Rights Director Leon Rodríguez wrote to me, among others, and clarified that “Section 1557’s sex discrimination prohibition extends to claims of discrimination on the basis of gender identity or failure to conform to stereotypical notions of masculinity or femininity . . . sexual harassment and discrimination regardless of actual or perceived sexual orientation or gender identity of the individuals involved.” A copy of OCR Director Rodríguez’s letter is enclosed as **Exhibit A**.

8. The 2016 Final Rule, promulgated by HHS following a prolonged notice-and-comment process, reaffirmed this interpretation by defining discrimination “on the basis of sex” to include “discrimination on the basis of . . . sex stereotyping, and gender identity.” 81 Fed. Reg. at 31,467.

9. The Revised Rule repeals entirely the 2016 Final Rule’s definition of discrimination “on the basis of sex,” without providing a different definition, while intimating that discrimination “on the basis of sex” is limited to discrimination based on the “biological binary of male and female that human beings share with other mammals.” 85 Fed. Reg. at 37,161–62, 37,178– 79. These actions conflict with HHS’s longstanding position regarding Section 1557, as noted in the 2012

letter and 2016 Final Rule, and creates confusion among health care providers, such as GLMA's members, and patients.

10. The Revised Rule also fosters greater discrimination against LGBTQ patients, who already experience widespread discrimination in obtaining health care and suffer significant health disparities in comparison to the general population. Research documents the history of this discrimination and the negative health outcomes that result. The majority of LGBTQ patients and patients living with HIV report having experienced providers refusing to touch them or using excessive precautions, providers using harsh or abusive language, providers being physically rough or abusive, and/or providers shaming LGBTQ patients and blaming these patients for their health status. A large percentage of transgender patients report having negative experiences related to their gender identity and transgender status when seeking medical care, including being exposed to verbal harassment or refusals of care.

11. LGBTQ patients face significant health disparities—higher risk factors for poor physical and mental health, higher rates of HIV, decreased access to appropriate health insurance, insufficient access to preventative medicine, and higher risk of poor treatment by health care providers. LGBTQ patients are vulnerable in other ways as well, including higher rates of poverty and limited access to LGBTQ-specific services, that present significant logistical and economic challenges to obtaining adequate health care. These harms are exacerbated by the Revised Rule. The Revised Rule will result in greater discrimination against LGBTQ patients, resulting in harm to patients and increased denials of services based not only on the medical services a patient seeks, but also on the patient's LGBTQ identity.

12. Among GLMA's strategic commitments is its ongoing collaboration with professional accreditation bodies, such as The Joint Commission, on the development,

implementation, and enforcement of sexual-orientation and gender-identity nondiscrimination policies as well as cultural-competency standards of care for the treatment of LGBTQ patients. Founded in 1951, The Joint Commission is the nation's oldest and largest standards-setting and accrediting body in health care. GLMA has worked with The Joint Commission and continues to work with similar professional bodies and health professional associations on standards, guidelines, and policies that address LGBTQ health, protecting individual patient health and public health in general.

13. The Revised Rule presents a direct conflict with nondiscrimination standards adopted by The Joint Commission and all major health professional associations, who have recognized the need to ensure LGBTQ patients are treated with respect and without bias or discrimination in hospitals, clinics, and other health care settings. Many of these efforts were prompted at least in part by GLMA's efforts through the years. For example, GLMA representatives, in coordination with other LGBTQ health experts, participated in the development and implementation of the hospital-accreditation nondiscrimination standards and guidelines developed by The Joint Commission to protect and ensure quality care for LGBTQ patients.

14. Similarly, GLMA has worked with the American Medical Association (AMA), among other health professional associations, over the last 15 years to ensure AMA policies prevent discrimination against LGBTQ patients and recognize the specific health needs of the LGBTQ community. All of the leading health professional associations—including the AMA, American Osteopathic Association, American Academy of PAs, American Nurses Association, American Academy of Nursing, American College of Physicians, American College of Obstetricians and Gynecologists, American Psychiatric Association, American Academy of Pediatricians, American Academy of Family Physicians, American Public Health Association,

American Psychological Association, National Association of Social Workers, and many more— have adopted policies articulating that health care providers should not discriminate in providing care to patients and clients because of patients’ sexual orientation or gender identity. By carving out LGBTQ people from the regulatory health care nondiscrimination protections of the ACA and other regulations, the Revised Rule violates the ethical and medical standards of care that health care professionals are charged to uphold, and sends a confusing and conflicting message that such discrimination is acceptable.

15. In order for a health care organization to participate in and receive federal payment from Medicare or Medicaid programs, the organization must meet certain requirements, including a certification of compliance with health and safety requirements, which is achieved based on a survey conducted either by a state agency on behalf of the federal government or by a federally-recognized national accrediting organization. Accreditation surveys include standards that health care organizations do not discriminate based on sex, sexual orientation, or gender identity in the provision of services and in employment. A health care organization that discriminates on these bases in the provision of patient care or in employment, or that otherwise deviates from medical, professional and ethical standards of care is vulnerable to loss of accreditation. The Revised Rule conflicts with these requirements.

16. If not enjoined, the Revised Rule will harm GLMA members, the interests of the LGBTQ patients represented by GLMA, and GLMA members’ patients. By removing explicit health care nondiscrimination regulatory protections for LGBTQ people, the Revised Rule prevents GLMA from achieving its goals with professional accreditation bodies. GLMA’s goals include achieving and enforcing accreditation standards relating to nondiscrimination on the basis of sex, sexual orientation, and gender identity, and cultural-competency standards of care for

treatment of LGBTQ patients. GLMA also works with health professional associations to create nondiscrimination policies and ensure their members understand and adhere to such standards. However, the Revised Rule creates confusion among those professional accreditation bodies and health professional associations about health care providers accountable for discrimination against LGBTQ people and denials of care when the discriminatory conduct is justified on the basis of religious or moral beliefs. For example, the Revised Rule would prevent agencies, to the extent allowed by law, from recognizing the loss of accreditation of a health care organization due to a specified anti-LGBTQ belief. The Revised Rule also invites such facilities to discriminate against LGBTQ patients without concern about the impact such discrimination will have on the organization's ability to continue receiving federal funding. The revised rule, therefore, frustrates GLMA's goals, conflicts with professional accreditation standards, and invites discrimination against LGBTQ people in health care. GLMA will have to divert resources to address this frustrated goal.

17. The Revised Rule also impedes GLMA members' ability to do their jobs because nondiscrimination is core to the work of health care providers treating their patients. Some members of GLMA are employed by religiously-affiliated health care organizations (for example, hospitals, hospices, or ambulatory care centers) that receive federal funds and are covered entities under Section 1557. These health care providers also treat LGBTQ patients. The Revised Rule invites religiously-affiliated health care employers to discriminate against employees who are GLMA members for adhering to and enforcing their medical and ethical obligations to treat all patients in a nondiscriminatory manner, including providing all medically-necessary care that is in patients' best interests. The Revised Rule impinges on and conflicts with GLMA members' ethical

and medical standards of care that health care providers are charged to uphold and harms the patients that they serve.

18. The Revised Rule invites harassment and discriminatory treatment of GLMA members with regards to terms and conditions of employment based on their LGBTQ status. This is particular problematic for GLMA members who work for covered entities with fewer than 15 employees and that are therefore not subject to Title VII, and which are located in states without any statutory protections from discrimination based on sexual orientation, gender identity, or transgender status.

19. GLMA members and their LGBTQ patients are stigmatized and demeaned by the message, communicated by the Revised Rule, that their government privileges beliefs that result in the disapproval and disparagement of LGBTQ people in the health care context.

20. As an organization of health professionals who serve and care for patients from the LGBTQ community, GLMA knows that discrimination against LGBTQ individuals in health care access and coverage remains a pervasive problem. GLMA members have reported numerous instances of discrimination, especially those based on religious or moral objections to treating patients. Members have reported:

- a. “I see patients nearly every day who have been treated poorly by providers with moral and religious objections. Patients with HIV who have been told that they somehow deserved this for not adhering to God’s law. Patients who are transgender who have been told that ‘we don’t treat your kind here’. The psychological and physical damage is pervasive.”
- b. “[Some providers in my clinic] do not wish to have contact with transgender patients, mumbling religious incompatibilities when asked why. These



people have made our transgender patients feel very uncomfortable and unwelcome at times, making them potentially more hesitant to use the health services they may need.”

- c. “The impact on my patients who were directly denied care was both psychological and physical. With regard to their mental wellbeing they clearly felt marginalized and disrespected. With regard to their physical wellbeing, they experienced delay in care, and in some cases disruption of their routine medication dosing or diagnostic assessment.”

21. GLMA members are also health care workers on the frontlines treating patients for COVID-19. GLMA members are, among other professionals, infectious disease specialists, residents, nurses, dentists, mental health providers and technicians treating COVID-19 patients in already overwhelmed health care systems. Discrimination against LGBTQ patients and health care providers is even more dangerous during this global health crisis. The pandemic is disproportionately affecting vulnerable communities, including LGBTQ people, for whom this Revised Rule adds another, often insurmountable, impediment to health care. Some GLMA members who are experiencing anti-LGBTQ animus on the frontlines fear sharing their stories for fear of being fired. Some GLMA members practice in workplaces with fewer than 15 employees and in states without explicit statutory protections on discrimination based on sexual orientation, gender identity, or transgender status. Those GLMA members who consented to share their stories explained that:

- a. “During this pandemic, the curiosity of my genitalia struck a conversation while on shift and was brought to my attention. I made Human Resources

aware, no action has yet to be made. I am not protected from conversations like these at work.”

- b. “I am acutely aware of how COVID19 has in many ways disproportionately impacted the LGBTQ community. So many of my patients are no longer able to go to the support groups they joined to support them in the coming out process. Some are home from college and living in settings where they don’t feel safe. Many remember the fear and isolation of living through the early days of the HIV epidemic.”
- c. “I am more concerned about discrimination towards LGBTQ+ patients, and stay on heightened awareness to call out ignorant comments or microaggressions that permeate the local culture, as well as systemic toxic masculinity.”
- d. “I actually had a few patients tell me that since ‘the gays spread HIV’ that ‘the gays must be spreading this one too.’”
- e. A transgender GLMA supporter on the frontlines during the pandemic reported that their own health care insurance refused to cover transition-related health care.

22. Based on what patients have told GLMA members about their history and fear of discriminatory treatment, it is clear that the Revised Rule will cause LGBTQ patients to attempt to hide their LGBTQ identities when seeking health care services, especially from religiously-affiliated health care organizations, to avoid such discrimination. When patients are unwilling to disclose their sexual orientation and/or gender identity to health care providers out of fear of

discrimination and being refused treatment, their mental and physical health is critically compromised.

23. The Revised Rule also harms patients with limited English proficiency (“LEP”) who may not receive real-time good quality translator services. GLMA members treat LEP patients and GLMA represents LEP LGBTQ patients’ interests. The Revised Rule adds another barrier to these LEP patients’ health care because they will not have access to life-saving information, including the resources to appropriately communicate about their health status, diagnoses, or treatment details. This communication barrier will create confusion and harm the health of LEP patients.

24. As a result of the Revised Rule, GLMA is required to divert its resources to educate and assist its members and the LGBTQ patients its members serve to defend against the harms that the Revised Rule causes. GLMA’s staff and resources already have been diverted from other program activities to engage in advocacy, policy analysis, and program-development to address the ill-effects of the Revised Rule. GLMA has worked tirelessly to get medical and other health associations to express their disapproval of the Revised Rule, which has diverted large amounts of resources away from other proactive projects and outreach efforts that are core to GLMA’s mission. For example, GLMA coordinated efforts to release a message from over 1,000 medical and mental health providers condemning the then-proposed Revised Rule. A copy of this message is attached as **Exhibit B**. GLMA also spends resources answering GLMA members’ inquiries about the Revised Rule given the pervasive concern that the Revised Rule contradicts medical ethical requirements and standards of care. GLMA must spend resources educating its members and the general health care community about GLMA’s position on the Revised Rule and its effects on health care practices and providers.

25. The Revised Rule will also adversely impact GLMA and its members by necessitating the diversion and reallocation of resources to maintain its online list of LGBTQ-affirming health care providers for patient referrals. As a result of the Revised Rule, GLMA and its members expect to see increases in the use of this online service and must allocate additional staff time to support this increase in website traffic. GLMA will have to contact providers listed on the list to ensure that they will continue to provide nondiscriminatory care to LGBTQ patients and will continue to adhere to their medical and ethical standards of care to treat all patients equally. Patients have even expressed concern about traveling outside of their home cities for business because if they are ever in need of emergency medical assistance, they will not know where to go to ensure that they will receive nondiscriminatory, proper health care services. This makes GLMA's referral list so important and GLMA will need to be a resource for these patients.

26. The Revised Rule empowers and invites religious-based discrimination against GLMA members and will contribute to discriminatory and even hostile work environments for GLMA members, LGBTQ health care providers, and LGBTQ-affirming health care providers. GLMA members who insist on treating patients equally and in accordance with medical and ethical standards of care are likely to be required to shoulder extra burdens as fellow employees decline to provide certain care. GLMA members also are likely to encounter push-back, hostility, and even adverse employment actions from their employers or fellow employees for trying to enforce nondiscrimination policies and provide appropriate care to patients. Because the vast majority of GLMA members are LGBTQ themselves, seeing LGBTQ patients treated in a discriminatory way by their colleagues and supported by their employers will have a profound impact on the environment in which they work.

27. GLMA, in turn, sees and will continue seeing an increase in health care providers seeking its assistance with addressing such discrimination. The increased demand for GLMA's services will drain GLMA's resources and hamper its other work, especially since GLMA already has a very limited bandwidth for such services.

*[Signature on next page.]*

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated this 6<sup>th</sup> day of July, 2020.

  
\_\_\_\_\_  
Hector Vargas

# EXHIBIT A

*Letter from Leon Rodríguez, Director, Office for Civil Rights, U.S. Department of Health & Human Services  
(dated July 12, 2012)*



DEPARTMENT OF HEALTH &amp; HUMAN SERVICES

Office of the Secretary

Director  
Office for Civil Rights  
Washington, D.C. 20201

July 12, 2012

Maya Rupert, Esq.  
Federal Policy Director  
National Center for Lesbian Rights  
1325 Massachusetts Ave. NW, Suite 700  
Washington DC 20005

OCR Transaction Number: 12-000800

Dear Ms. Rupert:

Thank you for your letter to Secretary Kathleen Sebelius, which was forwarded for reply to the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR). In your letter, you requested that we issue guidance clarifying that sex-based discrimination includes discrimination on the basis of gender identity and sex stereotypes under Section 1557 of the Affordable Care Act.

As you may know, OCR enforces Section 1557 of the Affordable Care Act (42 U.S.C. 18116), which provides that an individual shall not be excluded from participation in, be denied the benefits of, or be subjected to discrimination on the grounds prohibited under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* (race, color, national origin), Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.* (sex), the Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.* (age), or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (disability), under any health program or activity, any part of which is receiving Federal financial assistance, or under any program or activity that is administered by an Executive Agency or any entity established under Title I of the Affordable Care Act or its amendments. OCR has enforcement authority with respect to health programs and activities that receive Federal financial assistance from HHS or are administered by HHS or any entity established under Title I of the Affordable Care Act or its amendments.

We agree that Section 1557's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and will accept such complaints for investigation. Section 1557 also prohibits sexual harassment and discrimination regardless of the actual or perceived sexual orientation or gender identity of the individuals involved.

The HHS OCR is currently accepting and investigating complaints filed under Section 1557. We thoroughly review each complaint received; employ a case-by-case analysis of the facts and the relevant law; make a carefully considered decision on jurisdiction; and when warranted, issue a



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finding that discrimination has (or has not) occurred. The HHS OCR intends to issue future guidance on Section 1557.

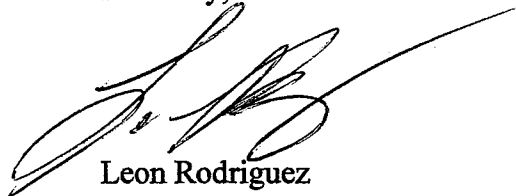
Until then, to make sure individuals, community organizations and providers know their rights and responsibilities, we ask you to help promote our website, [www.hhs.gov/ocr](http://www.hhs.gov/ocr), and:

- Learn about and connect with any one of our ten OCR regional offices  
<http://www.hhs.gov/ocr/office/about/rgn-hqaddresses.html>
- Learn how to file a complaint with OCR if you think your rights have been violated  
<http://www.hhs.gov/ocr/civilrights/complaints/index.html>
- Visit the HHS OCR You Tube channel (search for HHS OCR) for additional videos on topics like “Your Health Information, Your Rights” or “Communicating with Family, Friends and others Involved in Your Care”.

I also want to underscore what we discussed and shared during OCR’s January 30, 2012 LGBT/HIV Stakeholders Listening Session: my office is continuing and will continue to increase our outreach and education efforts with individuals, community organizations and providers regarding their rights and responsibilities under Section 1557. The Office for Civil Rights is absolutely committed to working with individuals and advocates to improving the health and well-being of members of the lesbian, gay, bisexual and transgender communities, and of course, the commitment to sincerely engage and partner with the LGBT community is a Department-wide commitment as demonstrated by the Secretary (see <http://www.hhs.gov/secretary/about/lgbthealth.html>) and the 2012 HHS LGBT Coordinating Committee Report which is available at [http://www.hhs.gov/secretary/about/2012\\_lgbt\\_an\\_rpt.pdf](http://www.hhs.gov/secretary/about/2012_lgbt_an_rpt.pdf).

Again, thank you for your leadership on these critical matters to the LGBT community and for your very thoughtful letter, and we look forward to our growing partnership and work together.

Sincerely,



Leon Rodriguez

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cc:

Michael Adams, Esq.  
Executive Director  
SAGE: Services and Advocacy  
for GLBT Elderly  
305 7th Avenue, 15th Floor  
New York, NY 10001

Eliza Byard, Ph.D.  
Executive Director  
Gay, Lesbian & Straight  
Education Network  
90 Broad Street, 2nd Floor  
New York, NY 10004

Leslie Calman, Ph.D.  
Executive Director  
The Mautner Project  
1300 19th Street, N.W., Suite 700  
Washington, DC 20036

Rea Carey, M.P.A.  
Executive Director  
National Gay and Lesbian Task Force  
1325 Massachusetts Ave., N.W., Suite 600  
Washington, DC 20005

Kevin M. Cathcart, Esq.  
Executive Director  
Lambda Legal  
120 Wall Street, 19th Floor  
New York, NY 10005-3904

Chad Griffin  
President  
Human Rights Campaign  
1640 Rhode Island Ave., N.W.  
Washington, DC 20036-3278

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Hutson W. Inniss  
Executive Director  
National Coalition for LGBT Health  
1325 Massachusetts Ave., N.W.  
Washington, DC 20005

Michael Keefe  
Executive Director  
Transgender Forge, Inc.  
P.O. Box 4186  
Seminole, FL 33775

Mara Keisling  
Executive Director  
National Center for Transgender Equality  
1325 Massachusetts Ave., N.W., Suite 700  
Washington, DC 20005

Anthony D. Romero, Esq.  
Executive Director  
American Civil Liberties Union  
125 Broad Street, 18th Floor  
New York, NY 10004

Hector Vargas, J.D.  
Executive Director  
Gay and Lesbian Medical Association  
1326 18th Street, N.W., Suite 22  
Washington, DC 20036

# EXHIBIT B

*Press Release, GLMA, 1,000+ Health Professionals Join  
Letter Opposing Healthcare Rights Law Rollback  
(dated May 29, 2020)*

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## 1,000+ Health Professionals Join Letter Opposing Healthcare Rights Law Rollback

### *PRESS RELEASE*

CONTACT: [press@glma.org](mailto:press@glma.org) or [press@transequality.org](mailto:press@transequality.org)

David Farmer (207) 557-5968

FOR IMMEDIATE RELEASE

May 29, 2020

#### Health Care Providers Urge Trump Administration To Delay Rule Change to the Affordable Care Act

WASHINGTON, D.C. – More than 1,000 medical and mental health providers have signed onto a letter in opposition to pending rules that would reinterpret nondiscrimination protections from the Affordable Care Act. The new rule sets the Trump administration’s view that the law doesn’t protect patients from discrimination because they are transgender, pregnant, or have a same-sex partner or family member. It also instructs hospitals and insurance companies that they are no longer required to provide patients with notices of their rights or how to get information in different languages.

The letter also urges the US Department of Health and Human Services to delay any rule change affecting access to health care until at least 90 days after the end of the COVID-19 public health emergency.

“As the death toll and hardships created by the COVID-19 pandemic continue to grow, the Trump administration and the Department of Health and Human Services should be working to expand access to health care, not creating excuses for providers to turn away transgender Americans,” said Mara Keisling, executive director of the National Center for Transgender Equality, a co-organizer of the letter. “The pending rules are heartless and wrong-headed. The rules should be rejected. But the least the Trump administration could do to help protect the health of transgender people is to delay their implementation until we are through this crisis.”

Section 1557 of the Affordable Care Act, also referred to as the Health Care Rights Law, prohibits discrimination on the basis of race, national origin, sex, age, or disability in health care programs or activities. It is the first federal civil rights law to prohibit discrimination based on sex in health care.

As proposed by the U.S. Department of Health and Human Services, this rule would falsely tell hospitals and health care insurance plans that they could:

- Refuse testing or treatment because a patient is transgender or doesn’t conform to sex stereotypes.
- Refuse testing or treatment because a patient has had an abortion.
- Refuse testing or treatment to patients based on a provider or staff member’s personal beliefs.
- Refuse testing or treatment based on sexual orientation, even in programs that have banned such discrimination since the G.W. Bush administration.

- Incorporate discriminatory plan benefit designs that eliminate/limit coverage critical to people with disabilities or preexisting conditions and place certain kinds of treatments needed by people with specific disabilities on the most expensive copay tiers.
- No longer notify patients of their right to receive information in their primary language.
- No longer notify patients of their right to file a grievance if they're mistreated.

“The pending rule changes will impede the delivery of life-saving health care even as the country grapples with more than 100,000 deaths with COVID-19,” said Hector Vargas, executive director of GLMA: Health Professionals Advancing LGBTQ Equality and co-organizer of the letter. “Health care providers are the frontlines of this pandemic and know that our medical systems and essential workers are overwhelmed. We also know that Section 1557 is essential in our efforts to prevent deaths. The pending changes are irresponsible and unnecessary.”

**The letter addressed to Secretary Alex Azar of the US Department of Health and Human Services is below:**

Re: Nondiscrimination in Health and Health Education Programs and Activities, Final Rule (RIN 0945-AA11)

On behalf of the more than 1,000 undersigned medical and mental health providers, we write to the administration in opposition to the pending final rule that would reinterpret the Affordable Care Act's nondiscrimination provisions so that the law will no longer protect patients from discrimination if they are transgender, pregnant, or have a same-sex partner or family member in a same-sex partnership. In addition, the new changes will direct hospitals and insurance providers that they will no longer have to provide notices of patient rights or instructions to get access to information in different languages.

As medical and mental health care providers, we vehemently oppose these rule changes and believe they will impede delivering of the highest quality of health care to the most marginalized, especially during a national public health crisis that has cost over 100,000 lives (1). We are on the frontlines of this pandemic and know firsthand that our medical systems and essential workers are heavily burdened and overwhelmed as the death toll continues to rise. We know that Section 1557 is essential in our efforts to prevent deaths during the current pandemic. Changes to this interpretation will be irresponsible and unnecessary as it will perpetuate discrimination and create unnecessary barriers for patients in accessing critical information about their rights and their health.

We know that this pandemic has already disproportionately impacted people of color. For example, data has already indicated that black and Latinx people in New York City are two times more likely to die compared to white people (2). In addition, we know that the LGBTQ community, especially LGBTQ people of color, are disproportionately impacted by this virus. This rule change will allow service providers to deny medical care, including testing and treatment for COVID-19, to many communities that are at greatest risk from this deadly virus and worsen health disparities. That's why we-- and this nation's leading health professional associations, including the American Medical Association, American Nurses Association, American Academy of Pediatrics, American Psychiatric Association, American Psychological Association and National Association of Social Workers, among others -- have repeatedly opposed this proposal even before this current crisis.

As proposed by the U.S. Department of Health and Human Services, this rule would falsely tell hospitals and health plans that they could:

- Refuse testing or treatment because a patient is transgender or doesn't conform to sex stereotypes.
- Refuse testing or treatment because a patient has had an abortion.
- Refuse testing or treatment to patients based on a provider or staff member's personal beliefs.
- Refuse testing or treatment based on sexual orientation, even in programs that have banned such discrimination since the G.W. Bush administration.
- Incorporate discriminatory plan benefit designs that eliminate/limit coverage critical to people with disabilities or preexisting conditions and place certain kinds of treatments needed by people with specific disabilities on the most expensive copay tiers.
- No longer notify patients of their right to receive information in their primary language.
- No longer notify patients of their right to file a grievance if they're mistreated.

For all of these reasons, we urge the administration to suspend this rule change. At a minimum, this rulemaking process should be suspended until at least 90 days after the termination of the current COVID-19 Public Health Emergency declared by Secretary Azar on January 31, and after a large majority of states are no longer subject to stay-at-home orders and closure of non-essential businesses.

HHS has called this pandemic “an emergency of unprecedented magnitude”; yet this administration has continued to fail us and the people that have been directly impacted by this crisis by creating barriers to testing, contact tracing, personal protective equipment and other critical supplies to save lives. We urge you to focus on the current crisis instead of exacerbating negative health outcomes from this deadly pandemic. If you have any questions, please contact Hector Vargas of GLMA or Debbie Ojeda-Leitner of NCTE.

Sincerely,

The Undersigned

(1) “Cases in the US.” CDC. May 19, 2020. Anchor<https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

(2) Crear-Perry, Joia and McAfee, Michael. “To Protect Black Americans from the Worst Impacts of COVID-19, Release Comprehensive Racial Data.” Scientific American. April 24, 2020.<https://blogs.scientificamerican.com/voices/to-protect-black-americans-from-the-worst-impacts-of-covid-19-release-comprehensive-racial-data/>.

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