



August 12, 2019

Secretary Alex Azar
U.S. Department of Health and Human Services
Herbert H. Humphrey Building, Room 509F
200 Independence Avenue SW
Washington, DC 20201

RE: Docket ID HHS-OCR-2019-0007, RIN 0945-AA11, Nondiscrimination in Health and Health Education Programs or Activities

Dear Secretary Azar:

#Out4MentalHealth submits these comments in response to the Department of Health and Human Services' ("HHS", "the Department") and the Center for Medicare and Medicaid Services ("CMS") Notice of Proposed Rulemaking ("proposed rule," "NPRM") to express our concerns with the proposed rule entitled "Nondiscrimination in Health and Health Education Programs or Activities" published in the Federal Register on July 14, 2019.

#Out4MentalHealth is a statewide initiative of the California LGBTQ Health and Human Services Network and NorCal Mental Health America. Through research, education, training, community building, and advocacy, #Out4MentalHealth promotes policies and funding to achieve mental health equity and well-being for LGBTQ Californians.

The proposed rule will threaten LGBT patients' access to mental health care and coverage

California is home to approximately 218,400 transgender people¹ and approximately 5.3% of Californians identify as LGBTQ². LGBTQ Californians are spread out in every part of the state, and include people of every age, ethnicity, and income level.

Thousands of transgender and gender nonconforming young people are likely to be impacted by the proposed changes to section 1557. A recent study found that 27% of California's youth, ages 12-17, are gender nonconforming³. These youth are more than twice as likely to experience psychological distress than their gender conforming peers. Transgender and gender nonconforming young people already face barriers to accessing appropriate mental health care, such as parental disapproval, lack of access to transportation, or challenges taking time off of school to seek care. We are concerned that the proposed changes will further exacerbate access issues for transgender and gender nonconforming youth.

In California, there is already a shortage of providers who offer many transition-related health care services. Transition-related health care includes a variety of services: mental health care, primary care, hormone therapy, and transition-related or gender-affirming surgeries.

Clinics and hospitals providing competent transition-related medical care are far and few in between in California. Trans people residing in areas outside of major cities such as San Francisco and Los Angeles will often travel long distances and at great cost to receive the care they need. Throughout this Spring, #Out4MentalHealth traveled throughout California to hear firsthand testimonies from LGBTQ people about what impacts their health and wellbeing. At our events in rural and semi-urban areas of California, attendees spoke of organizing fundraisers or carpooling multiple patients to save money to cover the cost of transition-related

¹ Flores, Andrew R., Jody L. Herman, Gary J. Gates, and Taylor N. T. Brown (2016). *How Many Adults Identify as Transgender in the United States?* Los Angeles, CA: Williams Institute. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>.

² LGBT Demographic Data Interactive. (January 2019). Los Angeles, CA: The Williams Institute, UCLA School of Law.

³ Wilson BDM, Choi SK, Herman JL, Becker T, Conron KJ. 2017. *Characteristics and Mental Health of Gender Nonconforming Adolescents in California: Findings from the 2015-2016 California Health Interview Survey*. Los Angeles, CA: The Williams Institute and UCLA Center for Health Policy Research.

health care. Even in Los Angeles, participants described the lack of providers as a major problem: *“You have to go over the mountain to get HRT [Hormone Replacement Therapy].”*

In rural areas, the problem is even more pronounced: *“We have to refer trans youth to Planned Parenthood [in a different city because our local one] doesn't have a doctor in the area [who can provide trans services]. Kaiser and Planned Parenthood are the few places to offer transgender services.”*

Even in areas with access to transition-related care, waiting lists are often over 100 patients long, and wait times for certain procedures are regularly over a year long⁴, with two to three year wait times not unheard of⁵. With new teaching fellowships emerging, and hospitals adding new services for transgender patients, we may see shorter wait times in the future. However, changes to the health care rights law could be devastating for the overall landscape of access to life-saving health and mental health care in California.

This proposed rule could create significant harm, particularly for our most underserved populations who already struggle to access health care. The proposed rule will erect barriers to care for transgender people and the LGBTQ community; people seeking reproductive health care, including abortion services; individuals with LEP, including immigrants; those living with disabilities and people of color. Moreover, this rule would embolden compounding levels of discrimination against those who live at the intersection of these identities. The proposed rule is dangerous and contravenes the plain language of Section 1557, specifically, and the ACA broadly.

⁴ Guzick, Hannah. “Low-Income Transgender Patients in Southern California Don’t Have Access to Life-Changing Surgeries.” *California Health Report*: September 12, 2016. <<http://www.calhealthreport.org/2016/09/12/low-income-transgender-patients-in-southern-california-dont-have-access-to-life-changing-surgeries/>>.

⁵ Nutt, Amy Ellis. “Meet the Gender-Affirmation Surgeon Whose Waiting List is Three Years Long.” *Los Angeles Times*: April 22, 2016. <https://www.washingtonpost.com/national/health-science/meet-the-gender-affirmation-surgeon-whose-waiting-list-is-three-years-long/2016/04/22/a4019f2e-f690-11e5-8b23-538270a1ca31_story.html?noredirect=on&utm_term=.6589e53e92c4>.

For the reasons detailed above, HHS and CMS should not finalize the proposed rule.

Thank you for considering these comments. If you have any questions or comments, please contact Amanda McAllister-Wallner at (916) 205-4699 or awallner@health-access.org.

Sincerely,

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