



James Firman, Chair

October 13, 2017

The Honorable Eric D. Hargan
Acting Secretary and Deputy Secretary of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Acting Secretary Hargan:

Since 1980, the Leadership Council of Aging Organizations (LCAO) has been the country's preeminent coalition representing tens of millions of older Americans. Comprised of 70 national nonprofit organization members, LCAO focuses on the well-being of America's older population and is committed to representing their interests in the policy-making arena. LCAO serves as a source of information about issues affecting older persons and provides leadership and vision as America meets the challenges and opportunities presented by its aging society.

Today we write to encourage the Department of Health and Human Services (HHS) to fully carry out the final rule implementing Section 1557 of the Affordable Care Act (ACA). We oppose any effort to reopen it or roll back its patient and consumer protections. Section 1557 and its rule are critically important to protecting older Americans not only from age discrimination but also from discrimination based on race, color, national origin, limited English proficiency, disability, or sex, including discrimination on the basis of gender identity or sex stereotypes. We recognize that certain aspects of the rule require new sub-regulatory guidance but we are deeply concerned that any reopening of this rule would weaken all of the rule's protections for patients and consumers.

HHS has stated in court documents that it has drafted a proposed rule to reopen and repeal portions of the 1557 implementing rule, just months after the rule's effective date, as it reevaluates the reasonableness, necessity, and efficacy of the Section 1557 implementing rule in light of ongoing litigation. This move is at odds with LCAO's vision of recognizing the diversity of America's older population and working to ensure that no older person experiences discrimination. Section 1557 is a landmark civil rights law. The Department's implementing rule was six years in development. The final Section 1557 rule was developed with multiple public comment periods and broad support from medical professionals, public health experts, and consumer advocates. We are deeply concerned that this move to reopen the rule only a year after it went into effect would risk weakening all of the rule's landmark patient and consumer protections.

Specifically, if the rule were reopened, we fear that resulting changes would undermine HHS's commitment to reducing health disparities and ensuring consumers have access to quality health care. Stark health disparities exist across race, gender, sexual orientation, and poverty lines, and older adults are no exception. For example, a larger share of Black and Hispanic Medicare beneficiaries report fair or poor health status than white beneficiaries. Similarly, Black and Hispanic adults age 65 and older are almost twice as likely as white older adults to develop diabetes. Such disparities not only mean poorer health among affected populations, they also lead to higher health care spending. Section 1557 is an important part of HHS's arsenal to combat health disparities, improve health care delivery, and in turn lower health care costs.

We are especially concerned that the Department appears poised to roll back its recognition that Section 1557 prohibits discrimination against LGBT individuals and their loved ones, as evidenced by the removal of references to gender identity and sex stereotyping as types of sex discrimination from certain hhs.gov webpages. LGBT older adults face pronounced health disparities and higher poverty rates compared to their heterosexual and cisgender peers due in large part to historical and ongoing discrimination.¹ HIV disproportionately impacts the LGBT community,² and it is affecting an increasing number of older adults.³ The *Aging and Health Report*, funded by the National Institutes of Health (NIH) and the National Institute on Aging (NIA), outlines a number of other disparities, including: lesbian, gay and bisexual (LGB) older adults face higher rates of disability and mental health challenges; older bisexual and gay men face higher rates of physical health challenges; bisexual and lesbian older women have higher obesity rates and higher rates of cardiovascular disease; and transgender older adults face greater risk of suicidal ideation, disability, and depression compared to their peers.⁴

There is significant evidence that discrimination in health care contributes to these disparities: LGBT older adults may be denied care or provided inadequate care, or they may be afraid to seek care for fear of mistreatment.⁵ For example, many LGBT older adults and their loved ones experience discrimination in long-term care facilities ranging from verbal and physical harassment, to visiting restrictions and isolation, to being denied basic care such as a shower, or being discharged or refused admission.⁶ Furthermore, transgender older adults in particular experience discrimination in coverage of medically necessary care related to gender transition, as well as in coverage of lifesaving tests and treatments typically associated with one gender.

The mission of the Department's Office for Civil Rights is "to improve the health and well-being of people across the nation" and "to ensure that people have equal access to and the opportunity to participate in and receive services from HHS programs without facing unlawful discrimination." In accord with that mission, we strongly urge you to preserve the rule implementing Section 1557.

Sincerely,

Aging Life Care Association
Alliance for Retired Americans
American Federation of State, County and Municipal Employees (AFSCME)
American Foundation for the Blind
American Geriatrics Society
American Society on Aging
Association For Gerontology and Human Development in Historically Black Colleges and Universities

¹ The National Gay and Lesbian Task Force, *No Golden Years at the End of the Rainbow: How a Lifetime of Discrimination Compounds Economic and Health Disparities for LGBT Older Adults*, (August 2013) available at www.thetaskforce.org/static_html/downloads/reports/reports/no_golden_years.pdf.

² Centers for Disease Control and Prevention, *HIV in the United States: At a Glance* (June 2017), available at www.cdc.gov/hiv/statistics/overview/ataglance.html.

³ Centers for Disease Control and Prevention, *HIV Among People Aged 50 and Over* (June 2017), available at www.cdc.gov/hiv/group/age/olderamericans/index.html.

⁴ Fredriksen-Goldsen et. al., *The Aging And Health Report: Disparities And Resilience Among Lesbian, Gay, Bisexual, And Transgender Older Adults* (November 2011), available at www.lgbtagingcenter.org/resources/resource.cfm?r=419

⁵ *Id.*

⁶ Justice in Aging et al., *LGBT Older Adults In Long-Term Care Facilities: Stories from the Field* (updated June 2015), available at www.justiceinaging.org/customers.tigertech.net/wp-content/uploads/2015/06/Stories-from-the-Field.pdf

B'nai B'rith International
Center for Elder Care & Advanced Illness
Center for Medicare Advocacy
Community Catalyst
Families USA
The Gerontological Society of America
The Jewish Federations of North America
Justice in Aging
Medicare Rights Center
National Academy of Elder Law Attorneys
National Adult Day Services Association (NADSA)
National Association of Area Agencies on Aging (n4a)
National Association of Nutrition and Aging Services Programs (NANASP)
National Association of Social Workers (NASW)
National Association of State Long-Term Care Ombudsman Programs (NASOP)
National Committee to Preserve Social Security and Medicare
National Consumer Voice for Quality Long-Term Care
National Council on Aging
National Foundation for the Blind
National Hispanic Council on Aging
National Senior Corps Association
SAGE
Service Employees International Union

cc: Roger Severino, Director; Robinsue Frohboese, Principal Deputy Director; March Bell, Chief of Staff;
and Eileen Hanrahan, Senior Civil Rights Analyst, HHS Office for Civil Rights