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September 11, 2023

VIA ELECTRONIC SUBMISSION

US Dept of Health and Human Services
Office for Civil Rights
Attention: HHS Grants Rulemaking (RIN–0945–AA19)
Washington, DC 20201

Re (RIN: 0945-AA19) Health and Human Services Grants Regulation

The Medicare Rights Center (Medicare Rights) appreciates this opportunity to comment on the Department of Health and Human Services (HHS) **Health and Human Services Grants Regulation** proposed rule. Medicare Rights is a national, nonprofit organization that works to ensure access to affordable and equitable health care for older adults and people with disabilities through counseling and advocacy, educational programs, and public policy initiatives. Each year, Medicare Rights provides services and resources to over three million people with Medicare, family caregivers, and professionals.

Medicare Rights strongly supports this proposed rule which would, among other changes, clarify the HHS interpretation of the prohibition of discrimination on the basis of sex to include (1) discrimination on the basis of sexual orientation and (2) discrimination on the basis of gender identity, consistent with the Supreme Court's decision in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020).

HHS-sponsored and -funded programs are important and sensitive. And all older adults and people with disabilities, no matter their gender identities, sexual orientations, sexes, or religions must have access to the services and supports they need to live with health, safety, agency, and independence. HHS programs often serve those with economic, social, and medical needs, for whom a denial of services can have significant negative impacts.¹ LGBTQ+ older people, in particular, face significant health and economic disparities, including pronounced social isolation and disproportionate rates of poverty.²

¹ US Dep't of Health & Human Services, "Programs & Services" (last visited September 7, 2023), <https://www.hhs.gov/programs/index.html>.

² See, e.g., 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), <https://nwnetwork.squarespace.com/s/2013-TF-No-Golden-Years.pdf>; Fredriksen-Goldsen, *et al.*, "The Aging And Health

There is significant evidence that discrimination in health care contributes to these disparities, causing LGBTQ+ older adults to be denied care or provided inadequate care.³ A failure to implement this proposed rule would only exacerbate the challenges affecting this population—such as discrimination, fear of accessing services and supports, lack of access to culturally competent services and supports, and the subversion of their civil rights—in ways that would further erode confidence in the nation’s health system, lead to worse care and outcomes, and backtrack some of the progress our society has made towards equity.

Strengthening access to HHS services will allow more Americans live with dignity and choice. In addition to Medicare and Medicaid, the agency administers much of the Older Americans Act’s (OAA) community-based programming that helps to provide services such as nutritious meals and caregiver assistance. HHS also oversees the OAA’s State Long-Term Care (LTC) Ombudsman programs, which work to protect LTC facility residents, as well as other programs like the Low-Income Home Energy Assistance Program that helps older adults and people with disabilities afford to stay in their homes.

These and other HHS services enable adults to age in place and help keep them safe when they can’t, but only if they are free from discrimination and otherwise meaningfully available. HHS taxpayer-funded grantees should never be allowed to post a sign, literally or figuratively, that states “No LGBTQ+ people may enter.” Similarly, HHS-funded entities should not be permitted to deny vital services on the basis of religion. Discrimination against any person because of their gender identity, sexual orientation, sex, or religion is antithetical to our organization’s core beliefs and to the American values of equality for all.

For these reasons, Medicare Rights supports the immediate promulgation of the proposed rule and a return to enforcing prohibitions against discrimination. Working together, we can improve access to vital programming and help ensure the safety and independence of older adults, people with disabilities, and their families.

Conclusion

Report: Disparities And Resilience Among Lesbian, Gay, Bisexual, And Transgender Older Adults” (November 2011), www.lgbtagingcenter.org/resources/resource.cfm?r=419; Shabab Ahmed Mirza & Caitlin Rooney, “Discrimination Prevents LGBTQ People from Accessing Health Care,” Ctr. for American Progress, (Jan. 18, 2018), https://www.americanprogress.org/issues/lgbt/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care/?link_id=2&can_id=d90c309ac9b5a0fa50d294d0b1cdf0b2&source=email-rx-for-discrimination&email_referrer=&email_subject=rx-for-discrimination; Justice in Aging *et al.*, “LGBT Older Adults In Long-Term Care Facilities: Stories from the Field” (updated June 2015), www.justiceinaging.org.customers.tigertech.net/wp-content/uploads/2015/06/Stories-from-theField.pdf; National Center for Transgender Equality, “Report from the 2015 U.S. Transgender Survey” (December 2016), <http://www.ustranssurvey.org/>; Center for American Progress, “Discrimination Prevents LGBTQ People from Accessing Health Care” (January 18, 2018), <https://www.americanprogress.org/issues/lgbt/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care/>; “Healthy People 2020, Lesbian, Gay, Bisexual, and Transgender Health,” U.S. Dept. Health & Human Serv., <https://www.healthypeople.gov/2020/topics-objectives/topic/lesbian-gay-bisexual-and-transgender-health>.

³ *Id.*

Thank you again for the opportunity to provide comment. For additional information, please contact Lindsey Copeland, Federal Policy Director at LCopeland@medicarerights.org or 202-637-0961 and Julie Carter, Counsel for Federal Policy at JCarter@medicarerights.org or 202-637-0962.

Sincerely,

A handwritten signature in cursive script that reads "Fred Riccardi".

Fred Riccardi
President
Medicare Rights Center