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December 19, 2019

VIA ELECTRONIC SUBMISSION

Re: RIN 0991-AC16

Dear Secretary Azar:

The Medicare Rights Center (Medicare Rights) appreciates the opportunity to respond to the notice of proposed rulemaking regarding the Department of Health and Human Services (HHS), Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards. Medicare Rights is a national, nonprofit organization that works to ensure access to affordable 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.

In November, HHS issued a Notice of Nonenforcement stating that it would no longer enforce regulations that prohibit certain types of discrimination in taxpayer-funded programs and services.¹ Soon after, HHS published this proposed rule to codify this new, damaging policy. If finalized, this change would effectively permit HHS grantees to discriminate on the grounds of gender identity, sexual orientation, sex, and (in certain instances) religion, and would allow such grantees to refuse to serve people who belong to these groups.

Medicare Rights opposes this proposed rule and urges HHS to withdraw it as well as the Notice of Nonenforcement.

HHS programs are among the most important and sensitive sponsored and funded by the federal government. 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 remain independent and active in their communities. HHS programs often serve those with economic, social, and medical needs, for whom a denial of services can have significant negative impacts. LGBT older people, in particular, already face pronounced social isolation, disproportionate rates of poverty, and a lack of access to culturally competent services and supports. Moreover, they experience discrimination

¹ 84 Fed. Reg. 63809.

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and fear of discrimination in accessing services and supports, leading to significant health and economic disparities.² Implementation of this proposed rule would exacerbate the challenges this population faces and reverse the progress our society has made towards equity.

HHS administers much of the funding for Older Americans Act programming that helps to provide services such as nutritious meals and caregiver assistance, 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. Such funds support key services that enable adults to age in place and live with dignity, but only if they can access it. HHS taxpayer-funded grantees should never be allowed to post a sign, literally or figuratively, that states “No LGBT people may enter.” Similarly, HHS-funded entities should not be permitted to deny vital services on the basis of religion. Any HHS-funded grantees discriminating 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 and freedom of religion that we so strongly support.

Any proposed weakening of current nondiscrimination policy may embolden additional discriminatory practices. At a minimum, contrary to HHS’s stated goal of predictability and stability in proposing these changes from current policy,³ implementation of the proposed rule would create additional and unnecessary confusion as to what activity is prohibited, what activity is not, and in which programs.

For these reasons, Medicare Rights opposes these changes and strongly urges HHS to withdraw the proposed rule and rescind the Notice of Nonenforcement. HHS should return to enforcing current prohibitions against discrimination by all HHS grantees and in all HHS programs. 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.

Thank you for the opportunity to provide feedback on the proposed rule. For additional information, please contact Lindsey Copeland, Federal Policy Director, at 202-637-0961 or lcopeland@medicarerights.org or Julie Carter, Senior Federal Policy Associate, at 202-637-0962 or jcarter@medicarerights.org.

Sincerely,

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 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 84 Fed. Reg. 63831, 63832.

Fred Riccardi

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