

September 22, 2020

Regulations Division, Office of General Counsel  
Department of Housing and Urban Development  
451 7<sup>th</sup> St SW  
Washington, DC 20410-0500

RE: Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs (RIN 2506-AC53)

Howard Brown Health is the largest LGBTQ health center in the Midwest serving over 38,000 patients across twelve clinic locations in Chicago. In 2019, Howard Brown served over 8,000 patients who identify as transgender or gender non-binary. As a Federally Qualified Health Center (FQHC), Howard Brown provides care to LGBTQ communities through primary care, behavioral health, research, mental health services, HIV/STI prevention, elder services and community outreach initiatives regardless of ability to pay. Through these programs, Howard Brown fulfills its mission of eliminating health disparities and improving health outcomes experienced by LGBTQ individuals through research, education and healthcare services.

Howard Brown also provides care for street-based LGBTQ youth through our Broadway Youth Center (BYC). The BYC was founded in 2004, and it acts as an entry-point to long-term, comprehensive care for Chicago's street-based, LGBTQ youth ages 12-24. Created as a trauma-responsive alternative to traditional care environments, BYC operates as a holistic, client-centered care home providing the following comprehensive services: medical care; behavioral health services; resource advocacy/case management; HIV/STI screening, treatment, and prevention; basic needs drop-in support (i.e., food, hygiene supplies, clothing, laundry, etc.); and youth education, vocation, and development services.

Based on our experience providing comprehensive care and services for transgender people and individuals experiencing homelessness, we are submitting this public comment to oppose the proposed rule titled, "Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs (RIN 2506-AC53)" from the Department of Housing and Urban Development (HUD).

Under this proposed rule, "single-sex" shelters would be allowed to "establish a policy that places and accommodates individuals on the basis of their biological sex, without regard to their gender identity." This means, for example, that a shelter for women experiencing homelessness could refuse to serve transgender women. If this rule is finalized, it would completely undermine HUD's 2016 "Equal Access in Accordance with an Individual's Gender Identity in Community Planning and Development Programs Rule" (Gender Identity

Rule), which provides critical nondiscrimination protections to ensure safe access to shelters for transgender people experiencing homelessness.

According to the 2015 U.S. Transgender Survey, a survey of nearly 28,000 transgender and gender-nonconforming people from all across the country, almost one-third (30%) of respondents reported experiencing homelessness at some point in their lives, with 12% of respondents reporting that they had experienced homelessness within the past year.<sup>1</sup> Of those who were homeless in the past year, 26% avoided accessing shelters due to fear of discrimination and mistreatment.<sup>2</sup> These fears are not unfounded. Prior to the finalization of the 2016 Gender Identity Rule, a study of 100 shelters across four states found that just 30% of shelters would house transgender women with other women, while 34% of shelters either refused service outright or referred transgender women to a men's shelter.<sup>3</sup> HUD's new proposed rule would expressly allow shelters to engage in these discriminatory practices.

HUD states that this proposed rule is necessary in part because of concerns about safety and privacy. However, research has shown that having nondiscrimination ordinances in place that protect transgender people's access to public accommodations—including restrooms, locker rooms, and changing rooms—has no effect on frequency of safety and privacy violations, including criminal incident reports of assault and voyeurism.<sup>4</sup> Furthermore, a group of over 300 domestic and sexual violence organizations signed onto a National Consensus Statement in agreement that having transgender-inclusive nondiscrimination protections in place does not create additional safety concerns or violations of privacy.<sup>5</sup>

This proposed rule is especially dangerous now as we are in the midst of a global pandemic. People experiencing homelessness may be at increased risk for contracting COVID-19 and experiencing worse health outcomes if they do become sick. That is why the CDC states the connecting people to stable housing needs to continue to be a priority throughout the

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<sup>1</sup> James SE, Herman JL, Rankin S, Keisling M, Mottet L, Anafi M. (2016). *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality

<sup>2</sup> *Ibid.*

<sup>3</sup> Rooney C, Durso L, Gruberg S. (2016). *Discrimination Against Transgender Women Seeking Access to Homeless Shelters*. Washington, DC: Center for American Progress.

<sup>4</sup> Hasenbush A, Flores A, Herman J. (2018). Gender Identity Nondiscrimination Laws in Public Accommodations: A Review of Evidence Regarding Safety and Privacy in Public Restrooms, Locker Rooms, and Changing Rooms. *Sexuality Research and Social Policy*. 16: 70-83.

<sup>5</sup> The National Task Force to End Sexual and Domestic Violence. (April 13, 2018). National Consensus Statement of Anti-Sexual Assault and Domestic Violence Organizations in Support of Full and Equal Access for the Transgender Community. Available at: <http://www.4vawa.org/ntf-action-alerts-and-news/2018/4/12/national-consensus-statement-of-anti-sexual-assault-and-domestic-violence-organizations-in-support-of-full-and-equal-access-for-the-transgender-community>

pandemic.<sup>6</sup> Shelters are also often the best access points to programs that can help provide individual housing for unstably housed people. The economic downturn caused by the pandemic will likely lead to increases in people experiencing homelessness when evictions and foreclosures resume. New research shows that without swift intervention, 30-40 million Americans may be at risk for eviction over the next several months.<sup>7</sup> As we struggle to control the pandemic, HUD should be doing everything in its power to increase access to housing resources rather than proposing rules that create additional barriers to resources for an already vulnerable group.

We strongly urge HUD to reconsider this proposed rule. If you have any questions or feedback regarding this comment, please feel free to contact Tim Wang, Director of Policy and Advocacy, at [timothyw@howardbrown.org](mailto:timothyw@howardbrown.org).

Sincerely,

David Ernesto Munar, President and CEO  
Howard Brown Health

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<sup>6</sup> <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/homelessness.html>

<sup>7</sup> Benfer E, Robinson D, Butler S, Edmonds L, Gilman S, McKay K, Neumann Z, Owens L, Steinkamp N, Yentel D. (August 7, 2020). *The COVID-19 Eviction Crisis: An Estimated 30-40 Million People in America are at Risk*. Available at: [https://nlihc.org/sites/default/files/The Eviction Crisis\\_080720.pdf](https://nlihc.org/sites/default/files/The_Eviction_Crisis_080720.pdf)