

September 11, 2023

Melanie Fontes Rainer  
Director for Office of Civil Rights  
U.S. Department of Health & Human Services  
200 Independence Ave, S.W.  
Washington, D.C. 20201

Re: HHS Grants Notice of Proposed Rulemaking (RIN-0945-AA19)

Dear Director Rainer,

On behalf of Howard Brown Health, we are responding to the Department of Health and Human Services notice of proposed rulemaking (RIN 0945-AA19). Howard Brown is a federally qualified health center in Chicago and we are the largest LGBTQ+ community health center in the Midwest. We provide comprehensive care to 40,000 patients annually and serve adults and youth with primary medical care, behavioral health, research, HIV/STI prevention, youth services, elder services, and community initiatives. As a federally qualified health center, Howard Brown provides services regardless of a patient's ability to pay or insurance status. We also proudly provide affirming care to over 5,000 patients living with HIV, as well as comprehensive HIV screening and prevention services, including pre-exposure prophylaxis (PrEP) and post-exposure prophylaxis (PEP).<sup>1</sup> Our mission is to make healthcare accessible for all and we can speak to the importance of supporting marginalized communities in receiving the support they need. We envision a future where healthcare and transformative social policies actualize human rights and equity for all.

We support the newly updated "HHS proposed rule on non-discrimination for the LGBTQ+ community." The proposed rule will undo the harms created with the Trump Administration rule and protect LGBTQ+ people from discrimination as they seek necessary medical and social services. HHS is the largest grant-making agency in the US, funding a wide breadth of necessary programs to support millions of Americans—including supportive programs for youth, aging people, those experiencing housing instability, and people living with HIV. The proposed rule would implement and strengthen much needed non-discrimination protection requirements for health and social service programs to receive HHS funding. Just over 7% of the American population,<sup>2</sup> roughly 23 million people, identify as LGBTQ+. Without sexual orientation, gender identity, sex, and religious discrimination protections, these growing populations are left exposed to discrimination from agencies that receive HHS funding, leaving many to go without necessary care and support. These federally funded programs must be accessible to all Americans.

---

<sup>1</sup> Howard Brown Health, 2021 Annual Report. <https://howardbrown.org/wp-content/uploads/2022/05/Howard-Brown-Health-2021-Annual-Report-051822.pdf>

<sup>2</sup> 2023 Gallup Poll, U.S. LGBT Identification Steady at 7.2%, <https://news.gallup.com/poll/470708/lgbt-identification-steady.aspx>

Enforcing non-discrimination protections will help eliminate barriers to healthcare and social services and help reduce health and socio-economic disparities that LGBTQ+ people face. For example, LGBTQ+ communities are disproportionately impacted by higher rates of chronic diseases such as cancer and HIV,<sup>3</sup> higher likelihood to experience depression and anxiety,<sup>4</sup> and higher risk for substance abuse.<sup>5</sup> LGBTQ+ communities also face significant socio-economic disparities. Because of income inequality and employment discrimination, LGBTQ+ people are more likely than cisgender, straight people to live in poverty (22% vs. 16%), with transgender people (29%), bisexual women (29%), and bisexual men (19%) experiencing the highest rates of poverty.<sup>6</sup> Nearly 3 in 10 LGBTQI+ adults report experiencing some kind of housing discrimination or harassment in the past year because of their sexual orientation, gender identity, or intersex status, including being prevented or discouraged from buying a home, being denied access to a shelter, or experiencing harassment from housemates or neighbors.<sup>7</sup> LGBTQ+ people may be especially likely to rely on programs funded by HHS because of these health and socio-economic disparities.

Unfortunately, pervasive anti-LGBTQ+ discrimination often prevents our communities from accessing these services, even though LGBTQ+ are more likely to rely on the health and social service programs that HHS funds. From major cities to rural areas, legislative sessions to school board meetings—LGBTQ+ individuals are exposed to discrimination in many areas of their life. We have seen this especially in recent years with a surge of harmful legislation attacking LGBTQ+ Americans. In 2023 alone, over 500 anti-LGBTQ+ bills have been introduced in state and federal legislatures.<sup>8</sup> These bills cover a variety of topics, including limiting access to healthcare and corroding public safety. Amidst the current political climate, anti-LGBTQ+ discrimination is even more prevalent, and discrimination often acts as a barrier to accessing health and social services. For example, more than 1 in 5 LGBTQ+ adults reported postponing or avoiding medical care in the past year due to disrespect or discrimination by providers, including more than 1 in 3 transgender or nonbinary individuals. Aging LGBTQ+ people often fear discrimination in long term care facilities and often must go back into the closet to avoid mistreatment in accessing elder services. These are

---

<sup>3</sup> Pinnamaneni M, Payne L, Jackson J, Cheng CI, Cascio MA. Disparities in chronic physical health conditions in sexual and gender minority people using the United States Behavioral Risk Factor Surveillance System. 2022. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9287429/>

<sup>4</sup> Mental Health Disparities: LGBTQ. American Psychiatric Association. <https://www.psychiatry.org/getmedia/552df1c0-57f2-4489-88fa-432182ce815a/Mental-Health-Facts-for-LGBTQ.pdf>

<sup>5</sup> Lesbian, Gay, and Bisexual Behavioral Health: Results from the 2021 and 2022 National Surveys on Drug Use and Health.

[https://www.samhsa.gov/data/sites/default/files/reports/rpt41899/2022\\_LGB\\_Brief\\_Final\\_06\\_07\\_23.pdf](https://www.samhsa.gov/data/sites/default/files/reports/rpt41899/2022_LGB_Brief_Final_06_07_23.pdf)

<sup>6</sup> Food Insecurity and Poverty in the LGBTQ Community with Bianca Wilson of UCLA's Williams Institute. Feeding America. <https://www.feedingamerica.org/about-us/podcast/Food-Insecurity-LGBTQ-Community>

<sup>7</sup> Discrimination and Barriers to Well-Being: The State of the LGBTQI+ Community in 2022. Jan 12, 2023. Center for American Progress. <https://www.americanprogress.org/article/discrimination-and-barriers-to-well-being-the-state-of-the-lgbtqi-community-in-2022/>

<sup>8</sup> Peele, C. Roundup of Anti-LGBTQ+ Legislation Advancing In States Across the Country. May 23, 2023. <https://www.hrc.org/press-releases/roundup-of-anti-lgbtq-legislation-advancing-in-states-across-the-country>

just a few examples of how discrimination can be a powerful deterrent for LGBTQ+ people in accessing necessary services.

We applaud the proposed rule and urge for its finalization because it will reinstate necessary nondiscrimination protections for LGBTQ+ Americans as they access services and programming funded by HHS. The proposed rule would also align HHS nondiscrimination protections with the *Bostock v. Clayton* ruling from 2020, clarifying and reaffirming the prohibition on discrimination based on sexual orientation and gender identity in federal statutes consistent with the Supreme Court's decision. This proposed rule is also aligned with the Biden Administration's recent efforts to enforce LGBTQ+ protections, including the "Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation" which addresses systemic discrimination and provides legal and policy frameworks to prevent such discrimination.

It is important to ensure that nondiscrimination protections for LGBTQ+ individuals are not weakened by any exemptions this rule might allow. This proposed rule reinstates many of the 2016 Obama Administration non-discrimination protections, but it also includes a religious exemption. With the recent surge of gender affirming care bans and other attempts to discriminate against LGBTQ+ individuals in public spaces, this exemption may provide an avenue for programs to discriminate against LGBTQ+ individuals. For example, in states across the country we've seen legislation and court cases aimed at allowing medical providers to refuse care, or adoption agencies to refuse services, or even graphic designers to refuse to create websites for LGBTQ+ people based on religious beliefs.

While the proposed rule does mention an application for exemptions must include, "sufficient, concrete factual basis" prior to allowing an exemption, this language is vague. We urge HHS to include specific language that state "concrete" and "factual" means there cannot be exemptions made based on transphobic myths or overbroad assumptions that have often been used to justify discriminatory legislation and policies. This will help to ensure a fair and consistent religious exemption process. We implore the Department to also publish formal determinations regarding any exemptions that grantees apply for on its website. This would provide clarity regarding rights and obligations to program participants and grant recipients, clearing up any ambiguity that might impede equitable access to services, especially for the vulnerable populations the grants are intended to support. Lastly, HHS should also urgently adopt broad nondiscrimination protections in HHS grant programs that are authorized by statutes that lack explicit nondiscrimination protections. Without clarifying these protections, LGBTQ+ people, women, people of minority faiths, and non-religious people face discrimination by a wide range of health and community service agencies that receive funding from HHS.

Ensuring that all individuals are able to receive the health care and social services they need is central to Howard Brown's mission. Too often we hear of patients having faced denials, mistreatment, and discrimination when trying to access support. As the nation continues to witness record-breaking anti-LGBTQ+ legislation, it is more crucial than ever to provide thorough discrimination protections. Thank you for the opportunity to provide comment. If you have any questions, please feel free to reach out to Tim Wang, Director of Policy and Advocacy, at [TimothyW@howardbrown.org](mailto:TimothyW@howardbrown.org).



Sincerely,

David Ernesto Munar  
President and CEO