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December 16, 2019

The Honorable Alex M. Azar II  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue SW  
Washington, DC

**RE: Proposed Rule Department of Health and Human Services, RIN 0991-AC16**

Dear Secretary Azar,

On behalf of the HIV Medicine Association, representing nearly 6,000 front-line HIV medical care providers and researchers across the United States, I write to request that you withdraw the proposed rule, RIN 0991-AC16. This rule removes important protections prohibiting discrimination in HHS-funded programs based on sexual orientation and gender identity under 45 CFR Part 75.300(c) and (d).<sup>1</sup> Agencies and programs that receive federal HHS grant money could turn away patients based on gender identity or sexual orientation, including transgender people, married same-sex couples, and LGBTQ children or children with same-sex parents.<sup>2</sup> This change could restrict access to critical health services, including HIV prevention and treatment, and would be a severe setback to the goals of the administration's Ending the HIV Epidemic: A Plan for the United States (EHE initiative).

The proposed rule legitimizes discrimination against LGBTQ people who already face stigma and other barriers to accessing care. LGBTQ people live without protections in most states based on their sexual orientation or their gender identity in many areas of their life, including employment, housing, and health care. Threatening to cut access to health care services for LGBTQ people at risk for and living with HIV would contribute to LGBTQ-related stigma and would significantly weaken the EHE initiative – which we strongly support.

The EHE is an ambitious federal initiative that calls for increasing efforts to diagnose, treat and prevent HIV infections in the United States, with an overall goal of reducing new HIV incidence by 90% by 2030.<sup>3</sup> Under this rule, HIV prevention and education programs could cherry-pick which

<sup>1</sup> HHS, Proposed Rule, <https://www.hhs.gov/sites/default/files/hhs-grants-regulation-nprm.pdf>

<sup>2</sup> Legal Information Institute, Statutory and national policy requirements under 45 CFR § 75.300, <https://www.law.cornell.edu/cfr/text/45/75.300>

<sup>3</sup> HHS, Overview of Ending the HIV Epidemic: A Plan for America initiative, September 03, 2019. <https://www.hiv.gov/federal-response/ending-the-hiv-epidemic/overview>

patients to serve and refuse to help LGBTQ individuals. Engaging all people living with HIV regardless of their sexual orientation or gender identify, instead of turning them away, will be essential to reduce stigma, advance HIV prevention and improve health outcomes.

Fifty-six percent of gay and bisexual men surveyed by the Kaiser Family Foundation mentioned HIV-related stigma as a significant barrier to reducing HIV among gay men.<sup>4</sup> Of the 38,739 new HIV diagnoses in the United States in 2017, 66% were among gay and bisexual men.<sup>5</sup> A significant demographic of new cases of individuals diagnosed with HIV are among African American and Latinx men who have sex with men, as well as a high incidence of HIV among transgender individuals.<sup>6</sup>

Transgender and gender non-conforming people frequently experience discrimination or refusal of health services. The proposed rule will further deter them from seeking and receiving quality health care and negatively impact health outcomes. Respondents from a study from the National Center for Transgender Quality and the National Gay and Lesbian Task Force indicated that gender identity was a reason for postponing medical care (28%) or denial of services altogether (19%).<sup>7</sup> Because of anti-transgender bias in care, LGBTQ and gender non-conforming individuals often mistrust the medical community. Discrimination by the health care system exposes LGBTQ people to an increased risk for HIV infection, smoking and drug use. Under this rule, a transgender person living with HIV could be denied health care services that are not only critical to personal health but will also increase the risk of transmission to others because their HIV is not fully controlled.

Again, we strongly encourage HHS to withdraw this proposed rule. The literature is clear; we must address and mitigate health disparities and stigma to improve the lives of millions of Americans.<sup>8</sup> This rule creates a severe risk to the health of LGBTQ people, people living with HIV, women, and youth. Reaching EHE's goal of reducing new HIV incidence by 90% by 2030 requires investing in programs that provide for health equity and not implementing policies that build mistrust in LGBTQ communities.

Please contact HIVMA Senior Policy & Advocacy Manager José A. Rodriguez at [JRodriguez@hivma.org](mailto:JRodriguez@hivma.org) with any questions regarding our comments.

Sincerely,



Judith Feinberg, MD, FIDSA  
Chair, HIVMA Board of Directors

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<sup>4</sup> KFF Survey, *HIV/AIDS in The Lives of Gay and Bisexual Men in the United States*, September 25, 2014.

<https://www.kff.org/hiv/aids/report/hiv-aids-in-the-lives-of-gay-and-bisexual-men-in-the-united-states/>

<sup>5</sup> CDC, Data on Gay and Bisexual Men, 2017. <https://www.cdc.gov/hiv/statistics/overview/ataglance.html>

<sup>6</sup> CDC, Data on New HIV Diagnoses in the US and Dependent Areas for the Most-Affected Subpopulations, 2017.

<https://www.cdc.gov/hiv/statistics/overview/ataglance.html>

<sup>7</sup> The National Center for Transgender Equality and the National Gay and Lesbian Task Force survey, *National Transgender Discrimination Survey Report on Health and Health Care*, October 2010. <https://cancer-network.org/wp-content/uploads/2017/02/National-Transgender-Discrimination-Survey-Report-on-health-and-health-care.pdf>

<sup>8</sup> NCHHSTP, White Paper on Social Determinants of Health, *Establishing a Holistic Framework to Reduce Inequities in HIV, Viral Hepatitis, STDs, and Tuberculosis in the United States*, 2010.

<https://www.cdc.gov/socialdeterminants/docs/SDH-White-Paper-2010.pdf>