

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

December 19, 2019

Division of Grants, Office of Grants Policy, Oversight, and Evaluation
Office of the Assistant Secretary for Financial Resources,
U.S. Department of Health and Human Services

Submitted electronically via Regulations.gov

Re: RIN: 0991-AC16 NPRM to Repromulgate or Revise Certain Regulatory Provisions of the Department of Health and Human Services, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards

Justice in Aging appreciates the opportunity to comment on the above referenced Notice of Proposed Rulemaking (NPRM). For the reasons discussed below, we urge HHS to withdraw the NPRM and the accompanying notice of nonenforcement.

Justice in Aging is an advocacy organization with the mission of improving the lives of low-income older adults. We use the power of law to fight senior poverty by securing access to affordable health care, economic security and the courts for older adults with limited resources. We have decades of experience with Medicare and Medicaid, with a focus on the needs of low-income beneficiaries and populations that have traditionally lacked legal protection such as women, people of color, LGBTQ individuals, and people with limited English proficiency.

All older adults should be able to access government programs and services, including those that HHS oversees, free from discrimination. That is why we are deeply concerned that HHS is currently not enforcing and proposing to rescind rules that prohibit its grantees from discriminating on the basis of gender identity, sexual orientation, sex, or religion.

Each year, HHS awards over \$500 billion in grants and contracts each year, many to providers of services that older adults rely on. For example, the Administration for Community Living (ACL) administers \$1.6 billion in federal funds for Older Americans Act (OAA) programs that support the independence, wellbeing, and health of older adults. These programs provide services that range from home-delivered meals and personal services that enable older people to remain in their homes, to transportation, senior centers and adult daycare, and legal services. In addition to these OAA programs, many older adults access other HHS programs, including domestic violence services, cancer screenings, HIV/STI prevention programs, health insurance programs, and assistance with energy bills.

By not enforcing and removing these prohibitions on discrimination, HHS is effectively authorizing taxpayer dollars to discriminate against and harm older adults and others. Specifically, we fear that eliminating these protections will cause harm to women, LGBTQ older adults, and members of minority faiths. For example, under the proposed rule revisions, a congregate meal site receiving federal funding as an HHS grantee could refuse to serve an older transgender woman; a senior center could continue to receive federal funding even though it ignores sexual harassment of women working there; an opioid treatment program could deny services to an older Muslim man.

The harms to LGBTQ older adults are compounded because they disproportionately need these programs given that, compared to heterosexual and cis-gender older adults, they face higher rates of poverty and social isolation and are less likely to have family to rely on. Furthermore, LGBTQ older

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adults face pronounced health disparities due in large part to historical and ongoing discrimination.¹ HIV disproportionately impacts the LGBTQ community², and it is affecting an increasing number of older adults³. The National Institutes of Health (NIH) and National Institute on Aging (NIA)-funded *Aging and Health Report* outlines a number of other disparities, including: lesbian, gay and bisexual (LGB) older adults face higher rates of disability and mental health challenges; older bisexual and gay men face higher rates of physical health challenges; bisexual and lesbian older women have higher obesity rates and higher rates of cardiovascular disease; and transgender older adults face greater risk of suicidal ideation, disability, and depression compared to their peers.⁴ Removing these explicit protections would exacerbate these disparities and undermine HHS's commitment to reducing health disparities and ensuring all older adults have access to services that enable them to live safely in their communities.

Finally, we disagree with HHS's assertion that these revisions would achieve simplicity. Rather, given the web of civil rights laws that prohibit entities receiving federal funding from discriminating against protected classes, the proposed rule would likely create unnecessary confusion for grantees and individuals as to what activity is prohibited or not, in which programs, and under what rules.

In short, authorizing providers of HHS-funded services to discriminate against any person because of their gender identity, sexual orientation, sex, or religion, is contrary to the mission of HHS to "enhance and protect the health and well-being of all Americans" and would prevent many older adults who are LGBTQ and/or members of minority faiths from accessing the services they need to ensure their health and financial well being and to age with dignity. For these reasons, we urge HHS to withdraw the NPRM and return to enforcing current prohibitions against discrimination that protect older adults and others by all HHS grantees and in all HHS programs.

Thank you for considering our comments. If any questions arise concerning this submission, please contact Natalie Kean, Senior Staff Attorney, at nkean@justiceinaging.org.

Sincerely,



Jennifer Goldberg
Deputy Director

¹ 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) available at www.thetaskforce.org/static_html/downloads/reports/reports/no_golden_years.pdf.

² Centers for Disease Control and Prevention, *HIV in the United States: At a Glance* (June 2017), available at www.cdc.gov/hiv/statistics/overview/ataglance.html.

³ Centers for Disease Control and Prevention, *HIV Among People Aged 50 and Over* (June 2017), available at www.cdc.gov/hiv/group/age/olderamericans/index.html.

⁴ Fredriksen-Goldsen et. al., *The Aging And Health Report: Disparities And Resilience Among Lesbian, Gay, Bisexual, And Transgender Older Adults* (November 2011), available at www.lgbtagingcenter.org/resources/resource.cfm?r=419