

# United States Senate

WASHINGTON, DC 20510

December 12, 2019

The Honorable Alex Azar  
Secretary  
U.S. Department of Health & Human Services  
200 Independence Avenue, S.W.  
Washington, DC 20201

Dear Secretary Azar:

We write today in strong opposition to the Department of Health and Human Services' (HHS) decision to end its enforcement of existing federal nondiscrimination regulations under 45 C.F.R. § 75.300 (c) and (d), and the proposed rule published on November 19, 2019 that will allow HHS grantees to deny services to members of the lesbian, gay, bisexual, transgender, and queer (LGBTQ) community under the guise of religious freedom. The Department's decision to stop enforcement of federal nondiscrimination regulations and the proposed rule represent government-sanctioned discrimination that is cruel and unwarranted, and will inflict tremendous harm on the more than 400,000 children currently in foster care across the country.<sup>1</sup>

Faith-based adoption and foster care agencies play a vital role in our federally funded welfare system. However, permitting these agencies to discriminate against potential parents based on their religion, gender identity or sexual orientation is not in the best interests of the children these agencies serve. Currently, more than 114,000 children in the foster care system cannot be returned to their families and are in need of a permanent home.<sup>2</sup> Coincidentally, as of 2016, an estimated 114,000 same-sex couples were raising children in the United States.<sup>3</sup> Of those couples, 21.4% had adopted, compared with just 3% of different-sex couples raising a child. These statistics confirm that the proposed rule would needlessly deprive children in need of permanent and loving homes of the opportunity to be adopted. This recent proposal reverses a policy put in place during the last administration that barred federal funding to HHS grantees that denied services to the LGBTQ community.

The proposed rule also represents serious concerns for LGBTQ foster youth, who represent more than one out of five youth in the foster care system.<sup>4</sup> LGBTQ foster youth are more likely to

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<sup>1</sup> Adoption Network, Adoption Statistics, <https://adoptionnetwork.com/adoption-statistics> (last visited Dec. 9, 2019).

<sup>2</sup> Derrick Bryson Taylor, *Adoption Groups Could Turn Away L.G.B.T. Families Under Proposed Rule*, N.Y Times (Nov. 2, 2019), <https://www.nytimes.com/2019/11/02/us/trump-hhs-lgbtq-rule.html/>.

<sup>3</sup> Shoshana K. Goldberg and Kerith J. Conron, Williams Institute, *How Many Same-Sex Couples in the U.S. are Raising Children?* (July 2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Parenting-Among-Same-Sex-Couples.pdf>.

<sup>4</sup> Press Release, Family Equality, *HHS Proposes Eliminating Data Collection on LGBTQ Foster Youth and Parents* (Apr. 17, 2019) [www.familyequality.org/press-releases/hhs-proposes-eliminating-data-collection-on-lgbtq-foster-youth-and-parents/](http://www.familyequality.org/press-releases/hhs-proposes-eliminating-data-collection-on-lgbtq-foster-youth-and-parents/).

have experienced harmful discrimination and mistreatment, such as forced conversion therapy. Allowing HHS grantees to discriminate against LGBTQ youth in the foster care system will not only have long-term effects on the social and emotional health of LGBTQ youth, but will deprive these vulnerable children of loving homes.

The harm the proposed rule will cause to members of the LGBTQ community is not limited to those in the foster care system in need of temporary or permanent placement, or those seeking to foster or adopt. Removing protections for LGBTQ individuals raises serious concerns about LGBTQ individuals' access to other programs administered through HHS, including HIV prevention, youth homelessness, refugee resettlement efforts, and violence prevention services for the elderly. Those who depend on these programs should not be denied access to them simply because of who they are or whom they love.

The harmful consequences both of this proposed rule as well as of HHS' refusal to enforce existing federal nondiscrimination regulations are deeply concerning to us. This concern is only exacerbated by HHS' apparent failure to conduct extensive impact analysis. Accordingly, we request that, by January 6, 2020, you respond to the following questions and provide the information requested:

1. Prior to the rule's publication, what analysis of its impact, if any, did HHS conduct? Did HHS analyze the number of people who may be unable to access services or programs under this rule? If HHS conducted any analysis, please provide all documentation of it. If not, why not?
2. Please provide data on the percentage of LGBTQ individuals that currently benefit from foster and adoption programs that would be impacted, to the extent that data is available.
3. How many children do faith-based adoption agencies or foster care services currently serve? What portion of the overall U.S. foster and adoption system is represented by faith-based adoption or foster organizations?
4. President Trump has previously called for a bipartisan commitment to end the HIV epidemic. Considering the proposed rule could restrict access to HIV prevention efforts, has the agency considered the proposed rule's impact on achieving the president's goal? If so, what has the agency determined? If not, why not?
5. President Trump has recognized the opioid crisis as a national health emergency. Grantees can use State Opioid Response (SOR) grants, administered through HHS, to assist in their prevention and treatment efforts. Will these grantees be able to refuse treatment and recovery services to LGBTQ individuals? If so, has the agency considered the proposed rule's impact on the President's Initiative to Stop Opioid Abuse?
6. The HHS Office of Head Start offers grant funding to 1,600 private and public nonprofit and for-profit agencies that provide Head Start services, including early learning, health, and family well-being. Under the proposed rule, would organizations receiving Head Start funding be able to deny service to children of LGBTQ parents?

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Thank you for your attention to this matter. If you have any questions, please contact Brianna Battle at [brianna\\_battle@markey.senate.gov](mailto:brianna_battle@markey.senate.gov) or Alix Lowe-Server at [Alexandra\\_lowe-server@gillibrand.senate.gov](mailto:Alexandra_lowe-server@gillibrand.senate.gov).

Sincerely,

  
Edward J. Markey  
United States Senator

  
Kirsten Gillibrand  
United States Senator