

Congress of the United States
Washington, DC 20515

July 8, 2020

The Honorable Alex M. Azar II
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Secretary Azar:

As Chairs of House Committees with legislative and oversight jurisdiction over programs administered by the Department of Health and Human Services (HHS), we condemn HHS' decision to finalize a rule stripping protections for LGBTQIA+ patients and other marginalized communities established by Section 1557 of the Affordable Care Act (ACA).¹ This rule should be immediately rescinded as it stands in glaring contradiction to Section 1557 of the ACA, and particularly in light of the Supreme Court's recent decision in *Bostock v. Clayton County*, which found that protections against sex-based discrimination under Title VII of the Civil Rights Act of 1964 necessarily prohibit discrimination based on sexual orientation and gender identity.

We previously wrote to you on May 1, 2020, warning that, if finalized, this rule would "open the door to discrimination against patients in express contradiction to the plain language and intent of the law, and would therefore be illegal."² The Supreme Court's ruling in *Bostock v. Clayton County* reaffirms that protections against sex discrimination apply to sexual orientation and gender identity.³ Any regulations sanctioning discrimination contradict the plain language of the law and defy Congress's intent in passing the ACA.

We also urged you not to finalize this dangerous rule while the United States continues to grapple with the coronavirus disease of 2019 (COVID-19) pandemic. Not only does this discriminatory rule threaten core protections for LGBTQIA+ patients, it also emboldens discrimination against women and pregnant people, people with limited English proficiency, immigrants, people of color, individuals with disabilities, and those living at the intersection of more than one of these identities. The rule would likely result in a denial of care for marginalized patients, as hospitals and health care providers may wrongly believe they are

¹ Department of Health and Human Services, *Nondiscrimination in Health and Health Education Programs or Activities: Delegation of Authority*, 87 Fed. Reg. 37160 (June 19, 2020) (online at www.govinfo.gov/content/pkg/FR-2020-06-19/pdf/2020-11758.pdf).

² Letter from Chairman Frank Pallone, Jr., House Committee on Energy and Commerce, Chairman Richard E. Neal, House Committee on Ways and Means, Chairman Robert C. "Bobby" Scott, House Committee on Education and Labor, and Chairwoman Carolyn B. Maloney, House Committee on Oversight and Reform, to The Honorable Alex M. Azar II, Secretary, Department of Health and Human Services (May 1, 2020) (online at <https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/2020-05-01.HHS%20re%20Section%201557%20Rule.pdf>).

³ *Bostock v. Clayton County*, 590 U.S. ___, 19 (2020).

permitted to discriminate against them. At this unprecedented time when nondiscriminatory access to health care is so vital for the wellbeing of all people in the United States, and yet out of reach for so many, the Administration's actions sow unneeded fear and mistrust among those already facing inequity in the health care system and experiencing health disparities.

Undermining protections for marginalized individuals is unacceptable at any time, but we must reiterate that it is particularly egregious to do so during the worst global pandemic in over a century and point out that the communities threatened by HHS' rule are already being disproportionately harmed by the COVID-19 crisis. It is disappointing—though consistent with past actions—that the Administration has chosen this moment once again to seek to limit access to health care and embolden discrimination against some of the most vulnerable among us.

We unequivocally condemn the finalization of this discriminatory rule by HHS. Accordingly, we strongly urge you to rescind it immediately due to the rule's failure to comport with the ACA's statutory nondiscrimination requirements, and in light of the *Bostock v. Clayton County* decision further affirming that protections against sex discrimination apply to sexual orientation and gender identity.

Thank you for your immediate attention to this matter.

Sincerely,



Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce
U.S. House of Representatives



Richard E. Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives



Robert C. "Bobby" Scott
Chairman
Committee on Education and Labor
U.S. House of Representatives



Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform
U.S. House of Representatives

cc: The Honorable Greg Walden, Ranking Member, Committee on Energy and Commerce
The Honorable Kevin Brady, Ranking Member, Committee on Ways and Means
The Honorable Virginia Foxx, Ranking Member, Committee on Education and Labor
The Honorable James Comer, Ranking Member, Committee on Oversight and Reform