



Debra B. Whitman, Chair

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

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

To Whom it May Concern:

The undersigned organizations of the Leadership Council of Aging (LCAO) appreciate this opportunity to comment on the **Notice of proposed rulemaking (NPRM) to repromulgate or revise certain regulatory provisions of the Department of Health and Human Services (HHS), Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards**. LCAO opposes this proposed rule and urges the Department of Health and Human Services (HHS) to withdraw it as well as the accompanying notice of nonenforcement.

LCAO is a coalition of national nonprofit organizations concerned with the well-being of America's older population and committed to representing their interests in the policy-making arena. Our coalition serves as a source of information about issues affecting older adults and provides leadership and vision as America works to meet the challenges and opportunities presented by our aging society. Our organizations have expertise in health care, economic security, nutrition and food security, housing, and other vital issues facing older adults and people with disabilities and are universally committed to advancing public health and promoting access to services and supports.

On November 1, 2019, HHS issued a Notice of Nonenforcement¹ stating that it would no longer enforce HHS regulations² that prohibit discrimination in taxpayer-funded programs and services based on gender identity, sexual orientation, sex, and (in certain instances) religion. On November 19, 2019, HHS published a proposed rule that would codify this policy, effectively permitting HHS grantees to discriminate on these grounds and refuse to serve people who belong to these protected groups.³

¹ <https://www.hhs.gov/about/news/2019/11/01/hhs-issues-proposed-rule-to-align-grants-regulation.html>

² <https://www.federalregister.gov/documents/2016/12/12/2016-29752/health-and-human-services-grants-regulation>

³ <https://www.federalregister.gov/documents/2019/11/19/2019-24385/office-of-the-assistant-secretary-for-financial-resources-health-and-human-services-grants>

As a threshold matter, LCAO believes that all older people, including older adults at the greatest economic, social, and medical risk, should have access to the services and supports that they need to remain independent—regardless of their gender identity, sexual orientation, sex, or religion. LGBT older people, in particular, already face pronounced social isolation, disproportionate rates of poverty, and a lack of access to culturally competent services and supports. Moreover, they experience discrimination and fear of discrimination in accessing services and supports, leading to significant health and economic disparities. Implementation of this proposed rule would exacerbate the challenges this population faces and reverse the progress our society has made towards equity.

The impact of the proposed rule on the Older Americans Act (OAA) and some HHS block grant programs (such as the Low-Income Home Energy Assistance Program, or LIHEAP) is of particular concern to LCAO. HHS administers much of the funding from this \$1.6 billion program through grants to states and local entities; these grants support key services that enable older adults to age in place and live with dignity. HHS taxpayer-funded grantees should never be allowed to deny a transgender older woman a congregate meal because of her gender identity; to deny an older lesbian tips on falls prevention simply because of her sexual orientation; to deny an older bisexual man the same caregiver supports as straight caregivers; or to deny a same-sex couple energy assistance because of their relationship. We cannot countenance government policies that would allow senior centers receiving taxpayer dollars to post a sign stating “No LGBT people may enter” or policies under which an OAA-funded transportation provider could preclude transgender older adults from riding in their van. Similarly, HHS-funded entities should not be permitted to deny vital services on the basis of religion. HHS-funded entities also should not be permitted to deny an older Muslim woman a congregate meal or an older Jewish man treatment for opioid addiction, for example. The notion that HHS-funded grantees could discriminate against any person because of their gender identity, sexual orientation, sex, or religion, is antithetical to our organizations’ core beliefs and to the American values of equality for all and freedom of religion that we so strongly support.

The proposed rule also comes at a time of increased occurrences of discrimination across the country. The proposed rule’s weakening of current nondiscrimination policy seems likely to embolden additional discriminatory practices. At a minimum, contrary to HHS’s stated goal of simplicity in proposing these changes from current policy, implementation of the proposed rule would create additional and unnecessary confusion as to what activity is prohibited, what activity is not, and in which programs.

Therefore, LCAO opposes this proposed rule. We strongly urge HHS to withdraw the proposed rule and return to enforcing current prohibitions against discrimination on any protected basis by all HHS grantees and in all HHS programs.

Sincerely,

The undersigned organizations

AARP
AFSCME
Aging Life Care Association
Alliance for Retired Americans
Alzheimer’s Association
Alzheimer’s Impact Movement

AMDA The Society for Post-Acute and Long-Term Care Medicine
American Association of Service Coordinators
American Geriatrics Society
Association for Gerontology and Human Development in Historically Black colleges and Universities
Center for Medicare Advocacy
Community Catalyst
International Association for Indigenous Aging
Justice in Aging
LeadingAge
Meals on Wheels America
Medicare Rights Center
National Academy for Elder Law Attorneys
National Adult Day Services Association
National Adult Protective Services Association
National Association of Area Agencies on Aging (n4a)
National Association of Nutrition and Aging Services Programs
National Association of Social Workers (NASW)
National Committee to Preserve Social Security & Medicare
National Council on Aging
PHI
Robert Lowe, American Society on Aging
Sage
Social Security Works
The Gerontological Society of America
The Jewish Federations of North America
The National Consumer Voice for Quality Long-Term Care
Women's Institute for a Secure Retirement
Volunteers of America