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Administration Weakens Regulatory Protections for Patients

HHS Sanctions Discrimination Against LGBTQ+ Individuals During Pride Month

Washington, DC—Today the United States Department of Health and Human Services (HHS) finalized changes to the implementing regulations of Section 1557 of the Affordable Care Act (ACA), effectively weakening patient protections against discrimination. These changes risk access to healthcare for millions of vulnerable populations, in particular for many people living with, and most at risk for HIV. The timing of the release is dangerous and tone-deaf, coming during a pandemic and at a time of heightened concern about systemic oppression.

The rule issued today changes the way the administration interprets and enforces existing civil rights laws prohibiting discrimination. Although federal law continues to prohibit discrimination based on race, color, national origin, sex, age, or disability in any health program or activity that receives federal financial assistance, this rule narrows key definitions specifically related to gender and health status, opening the door to more discrimination in health care. Prior to the release of the rule, The AIDS Institute met with officials at the Office of Management and Budget to outline our opposition to these changes.

The revised rule eliminates language expressly prohibiting discrimination on the basis of gender identity, sending a clear signal to health care providers that they may refuse to treat transgender people and those who do not conform to traditional sex stereotypes, even when seeking care for unrelated issues, such as a broken bone, a sinus infection, or COVID-19. LGBTQ+ individuals already experience significant barriers to care; these changes will further exacerbate access and health outcomes disparities. The effects of this rule will perpetuate on-going challenges to combat HIV, which disproportionately
impacts people of color, gay and bisexual men, and transgender women who have sex with men.

Rachel Klein, Deputy Executive Director of The AIDS Institute, questioned the move by HHS, saying: “This rule change undermines the administration’s own initiative to eliminate the HIV epidemic by reinforcing stigma and barriers to care for people living with and at risk of HIV. This unnecessary move – coming at a time when this nation is battling a new pandemic that is disproportionately killing people in vulnerable communities – does not serve any healthcare goal. Rather, it tacitly approves the underlying bias that has hampered efforts to end HIV for decades.”

The changes undermine regulatory protections that currently prevent health insurers from engaging in insurance issuance practices, coverage, cost-sharing, marketing, or benefit design in ways that would discriminate against certain groups of people, such as LGBTQ+ individuals or those living with HIV.

The AIDS Institute has fought discriminating practices by health plans that structured their plan designs in ways that would discourage people living with HIV from selecting those plans. In 2014, The AIDS Institute and the National Health Law Program (NHeLP) filed a complaint with the national Office for Civil Rights regarding four issuers that had violated Section 1557 by placing all HIV antiretroviral medications on the highest prescription drug formulary tier. The high cost-sharing associated with that tier was used as a deterrent to a particular group of people based on their disease status.

“This rule will give health insurance issuers free reign to discriminate against people living with HIV,” said Michael Ruppal, Executive Director of The AIDS Institute. “We saw this happen in Florida before the original Section 1557 rule was promulgated. Health plans will no doubt seize this opportunity to once again design benefit plans that make it difficult or impossible for people living with or attempting to prevent HIV to get the medicines and care they need.”

The release of this final rule seems to be particularly insensitive considering the current national situation calling on leaders to address systematic oppression against Black Americans. Additionally, June is the month during which most Pride celebrations occur, commemorating the Stonewall riots that sparked the modern LGBTQ movement. This rule does nothing to advance the health and well-being of the nation overall, and stands to do great harm to LGBTQ+ people and people living with HIV.

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The AIDS Institute is a national non-partisan, nonprofit organization that promotes action for social change through public policy, research, advocacy and education.

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