

# United States Senate

WASHINGTON, DC 20510

August 15, 2017

The Honorable Thomas E. Price, M.D.  
Secretary of Health and Human Services  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

Dear Secretary Price:

We write with continued concern about your plans for enforcement of Section 1557 of the Affordable Care Act (ACA), which prohibits discrimination in health care on the basis of race, color, national origin, sex, age, and disability. Many of us wrote to you on May 10, 2017 about your failure to enforce existing regulations and changes to the webpage of the Department of Health and Human Services (HHS or the Department) regarding those regulations. While you have yet to respond to our initial questions, the Department has made additional website changes that send concerning signals about whether the Trump Administration will protect individuals against discrimination within our health care system. We believe strongly that the government should work to eliminate discrimination and disparity within the health care system, not make it worse, and we request your immediate attention to this matter.

As we have previously reminded you, Section 1557 of the ACA requires that on the basis of race, color, national origin, sex, age, or disability, an individual cannot be:

excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance, including credits, subsidies, or contracts of insurance, or under any program or activity that is administered by an Executive Agency.<sup>1</sup>

Rather than enforcing the provisions of the law that protect individuals from discrimination, the Trump Administration has consistently failed to vigorously enforce the law or provide clarity around discrimination protections. The decision to hire Roger Severino, who has previously praised government officials for refusing to provide marriage licenses to same-sex couples and criticized the Supreme Court for upholding a woman's constitutional right to privacy,<sup>2</sup> to head the Office of Civil Rights (OCR) was one of the first indications that HHS may be moving backwards on civil rights. Our concern that the Administration is not committed to combatting

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<sup>1</sup> 42 U.S.C. 18116.

<sup>2</sup> <http://dailysignal.com/2015/09115/lessons-learned-from-kim-davis-about-religious-liberty-and-government-accommodation/>; <http://dailysignal.com/2016/06/27/supreme-court-strikes-down-commonsense-abortion-clinic-safety-standards/>

discrimination was heightened by the decision to delay litigation to enforce Section 1557 while the Department reconsiders Section 1557 regulations.<sup>3</sup>

Finally, following the removal of language in the “Frequently Asked Questions” section of the HHS webpage about Section 1557 regulations, many of us wrote asking you to explain the rationale.<sup>4</sup> Now, additional language clarifying that discrimination based on gender identity and sex stereotyping constitutes discrimination on the basis of sex has also been removed. As of today, the website mentions only discrimination on the basis of pregnancy as a type of sex discrimination, after HHS removed the following language:

“gender identity and sex stereotyping. More than 25 years ago, the U.S. Supreme Court held that discrimination based on stereotypical ideas about gender is unlawful sex discrimination. While the final rule does not resolve whether discrimination on the basis of an individual’s sexual orientation status alone is a form of sex discrimination under Section 1557, the rule makes clear that OCR will evaluate complaints that allege sex discrimination related to an individual’s sexual orientation to determine if they involve the sorts of stereotyping that can be address under 1557. HHS supports prohibiting sexual orientation discrimination as a matter of policy and will continue to monitor legal developments on this issue.”

The Department’s removal of language indicating support for prohibiting sexual orientation discrimination as a matter of policy would be disturbing on its face alone, but it is especially concerning given the divisive and harmful rhetoric that President Trump has used and encouraged. There have also been troubling reports of plans to move forward with revising the regulations implementing Section 1557, which the Administration has previously indicated it “has concerns as to the need for, reasonableness, and burden imposed” by these regulations.<sup>5</sup> We previously asked whether there were plans to revise the regulations and have not received a response to our inquiries.

While Republicans in Congress have indicated a willingness to work on a bipartisan basis to improve health care, President Trump has continued to suggest he will sabotage health care for families across the country. As Secretary of HHS, we ask that you work to ensure your agency respects all people, and continues to serve everyone, including women, people of color, LGBTQ individuals, immigrants, people who communicate in a language other than English, people with disabilities, people experiencing homelessness, and people of all religious backgrounds and beliefs, rather than roll back discrimination protections.

In addition to responding to the questions in the letter on this topic dated May 10, 2017, we ask that you respond to the following questions no later than August 25, 2017 and prior to making any changes to the existing regulations:

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<sup>3</sup> Defendants’ Motion for Voluntary Remand and Stay, *Franciscan Alliance, Inc. et al v. Burwell et al* (N.D. Tex. May 2, 2017).

<sup>4</sup> <https://www.help.senate.gov/imo/media/doc/051017%20-%20ACA%20Section%201557.pdf>

<sup>5</sup> Supra note 3.

1. Does HHS still agree that discrimination based on stereotypical ideas about gender is unlawful sex discrimination?
2. Does HHS still support prohibiting sexual orientation discrimination as a matter of policy?
3. Please respond to questions 5, 6, and 7 from the May 10, 2017 letter to include these more recent actions as well. For your convenience, a copy of that letter is also attached.

If you have any questions or would like to further discuss compliance with this request, please contact Laurel Sakai or Carly Rush with Senator Murray's HELP Committee staff at (202)224-0767.

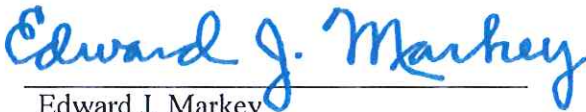
Sincerely,



Patty Murray  
United States Senator



Richard Blumenthal  
United States Senator



Edward J. Markey  
United States Senator



Tammy Baldwin  
United States Senator



Sherrod Brown  
United States Senator



Sheldon Whitehouse  
United States Senator



Patrick J. Leahy  
United States Senator



Bernard Sanders  
United States Senator



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Al Franken  
United States Senator



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Kirsten Gillibrand  
United States Senator



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Cory A. Booker  
United States Senator



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Chris Van Hollen  
United States Senator




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Ron Wyden  
United States Senator



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Mazie K. Hirono  
United States Senator



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Elizabeth Warren  
United States Senator