

United States Senate

WASHINGTON, DC 20510

February 19, 2020

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

Dear Secretary Azar:

We write to strongly oppose the Department of Health and Human Services' (the Department) proposed rule entitled "Ensuring Equal Treatment of Faith-Based Organizations" (RIN 0991-AC13). The proposed rule—developed under the guise of religious liberty—is actually both an attack on religious freedom and yet another step taken by President Trump to greenlight federally-funded discrimination. The proposed rule drastically expands religious exemptions for faith-based social service providers and strips away religious freedom protections from beneficiaries, who are entitled to government-funded social services. The proposed changes to the existing regulation place vulnerable beneficiaries at risk of going unserved and could prevent individuals from accessing government-funded jobs, especially women, the LGBTQIA+ community, the non-religious, and religious minorities. We demand the Department immediately withdraw this proposed rule and implement the vital religious freedom protections existing in current regulation.

1. The Proposed Rule Eliminates Religious Liberty Protections for Beneficiaries

The proposed rule eliminates a provision requiring faith-based organizations that receive direct financial assistance to give written notice to beneficiaries to ensure those beneficiaries are aware of the religious nature of the organization and of certain rights they possess as beneficiaries.¹ For example, under the existing regulation, faith-based providers must provide prior written notice to beneficiaries explaining they are not required to attend or participate in any explicitly religious activities (including activities that involve overt religious content, such as worship, religious instruction, or proselytization), or to participate in activities that are voluntary.

Without this notification requirement, beneficiaries may not be aware of either the religious-affiliation of the organization or their ability to receive services while declining to participate in explicitly religious activities.² People cannot exercise their rights, including the right of religious freedom, without knowledge of the scope and nature of those rights. Further, the Department should prioritize ensuring all people who are eligible for services are able to use them, rather

¹ 45 CFR § 87.3(i)

² *Id.*

than create barriers by allowing potentially discriminatory actions to discourage people from accessing services.

Similarly, the proposed rule eliminates the requirement that federally-funded religious providers refer beneficiaries to an alternative provider if their religious beliefs conflict. Currently, if a beneficiary objects to the religious nature of a provider, a faith-based organization must “undertake reasonable efforts to identify and refer the beneficiary to an alternative provider” that is “in reasonable geographic proximity to the organization making the referral and that offers services that are similar in substance and quality to those offered by the organization.”³ By eliminating this requirement, the Department would abandon protections to ensure beneficiaries can access providers consistent with their beliefs.

Finally, the proposed rule adds language giving faith-based organizations that receive indirect federal financial assistance explicit permission to include mandatory religious elements in their programs.⁴ This provision would further eliminate opportunities for beneficiaries to have real choices in accessing the services they need. Beneficiaries living in areas without alternative, non-religious providers could be forced to attend religious services or other religious programs that contradict their own religious beliefs. The Department’s role should be ensuring that all eligible individuals, regardless of their beliefs, can access services funded by the Department.

2. The Proposed Rule Greenlights Entities Receiving Taxpayer Dollars to Discriminate Against Vulnerable Workers and Beneficiaries

The Department’s proposed rule amplifies actions by faith-based entities to discriminate against workers and beneficiaries, particularly those who are LGBTQIA+ and women. The proposed rule would allow employers to make decisions based on the “acceptance of or adherence to the religious tenets of the organization,” which is an expansion of the religious exemption rule under Title VII.⁵ This means an organization could use its self-defined religious tenets to fire an individual or deny them resources on the basis of their sex, including their sexual orientation, gender identity, pregnancy, childbirth or related medical conditions. Accordingly, the proposed rule effectively allows entities that receive federal support to discriminate.

The proposed rule will both create uncertainty for employers, social service providers, and beneficiaries and open the door to discrimination. The federal government should be working to reduce discrimination against workers, particularly those who already face high rates of discrimination in the workplace. In a 2017 nationally representative survey reporting harassment in the LGBTQIA+ community, 20 percent of LGBTQIA+ people reported experiencing discrimination when applying for jobs.⁶ In the same survey, nearly 60 percent of LGBTQIA+ people agreed with the statement, “LGBTQ people where I live have fewer employment

³ *Id.*

⁴ 45 CFR § 87.3(d)

⁵ <https://www.govinfo.gov/content/pkg/FR-2020-01-17/pdf/2019-26923.pdf>

⁶ <https://www.npr.org/documents/2017/nov/npr-discrimination-lgbtq-final.pdf>

opportunities.⁷ In a March 2018 report on LGBTQIA+ poverty and economic justice, between 15 percent and 43 percent of LGBTQIA+ workers reported having experienced discrimination on the job.⁸ In the 2015 U.S. Transgender Survey, 30 percent of survey respondents who had a job the previous year reported being fired, being denied a promotion, or experiencing some form of mistreatment.⁹

Women also face significant discrimination in the workplace, which this rule would further embolden.¹⁰ In a 2017 survey, approximately four out of ten women reported facing discrimination in the workplace.¹¹ Historically, some of this discrimination has resulted from women exercising reproductive health decisions. For example, pregnancy discrimination cases filed with the Equal Employment Opportunity Commission have risen substantially over recent decades, while¹² a 2014 survey estimates nearly a quarter million women are denied requests for accommodations related to pregnancy each year.¹³ Some employers have threatened to fire employees for using contraception, while others have fired workers for being unmarried and pregnant,¹⁴ or for having an abortion.¹⁵ Women workers have also been discriminated against in terms of pay and benefits and working conditions because of religious beliefs about the appropriate role of women in society. For example, a religious school denied a married woman the opportunity to enroll in health insurance because the school only provided insurance to the “head of household,” which the school defined to be married men and single persons.¹⁶ The proposed rule could allow faith-based entities to exacerbate existing challenges facing women and discriminate against those employees who do not share the same beliefs as their employer.

The Department falsely claims these damaging changes are necessary to ensure equal access to taxpayer dollars as secular organizations. The existing regulation, however, does not prevent faith-based organizations from accessing taxpayer dollars. Instead, it provides important protections to ensure all people have the opportunity to receive services and work for organizations funded by the Department. Protecting equal access for beneficiaries and potential employees, regardless of their religious beliefs and identities, is and should always remain the Department’s number one priority. We demand the Department put the American people first and withdraw the proposed rule.

Sincerely,

⁷ *Id.*

⁸ https://socialjusticesexuality.com/intersecting_injustice/

⁹ <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>

¹⁰ <https://www.cnbc.com/2017/12/19/one-fifth-of-american-adults-have-been-sexually-harassed-at-work.html>

¹¹ <https://www.pewresearch.org/fact-tank/2017/12/14/gender-discrimination-comes-in-many-forms-for-todays-working-women/>

¹² <https://www.americanprogress.org/issues/women/news/2018/11/02/460353/efforts-combat-pregnancy-discrimination/>

¹³ <http://www.nationalpartnership.org/our-work/resources/workplace/pregnancy-discrimination/listening-to-mothers-experiences-of-expecting-and-new-mothers.pdf>

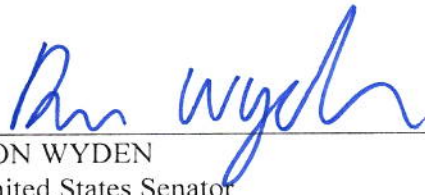
¹⁴ https://www.huffpost.com/entry/tom-price-women-fired-reproductive-rights_n_587fca54e4b00d44838ca8a5

¹⁵ <https://louisianarecord.com/stories/512676950-u-s-district-court-rules-that-state-law-forbids-abortion-discrimination-in-workplace>

¹⁶ *EEOC v. Fremont Christian Sch.*, 781 F.2d 1362 (9th Cir. 1986).



PATTY MURRAY
United States Senator



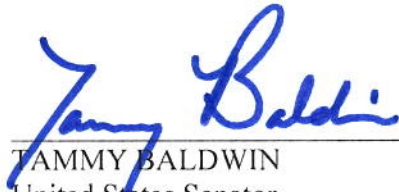
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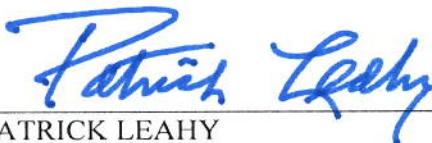
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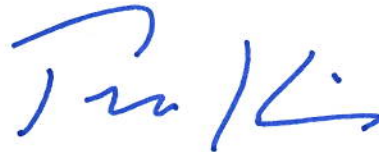
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