

United States Senate

WASHINGTON, DC 20510

March 18, 2020

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

Dear Secretary Azar,

We write to share our concerns about the impact of the COVID-19 pandemic on the 1.1 million Americans living with the human immunodeficiency virus (HIV).¹ COVID-19 poses a serious health risk for individuals living with HIV, and this risk is heightened by barriers to health care access. Your agency's actions to reduce health care discrimination protections for members of the lesbian, gay, bisexual, transgender, and queer (LGBTQ) community have created additional risks for this population during this national emergency. We aim to call your attention these issues and urge you to take affirmative action to ensure everyone in the United States, including people living with HIV, can safely access COVID-19 testing, treatments, and support services.

As the federal government's principal agency dedicated to "protecting the health of Americans and providing essential human services,"² the U.S. Department of Health and Human Services (HHS) annually awards more than \$500 billion in taxpayer-funded grants and contracts to support a wide range of critical programs and services. Many Americans will depend on these programs and services during the COVID-19 pandemic. However, under President Trump your agency has repeatedly sought to undermine anti-discrimination protections for HHS-funded programs and services. On June 14, 2019, your agency published a proposed rule (RIN 0945-AA11) that would rollback anti-discrimination protections in Section 1557 of the Affordable Care Act. This proposed rule would eliminate protections based on gender identity and sex stereotyping, which is understood to encompass sexual orientation. On January 17, 2020, your agency published a proposed rule (RIN 0991-AC13) that would allow HHS grant recipients to cite their religious faith as justification for choosing not to serve certain people. Both of these rules could leave LGBTQ people without access to the health services they need.

HIV and AIDS have a disproportionate impact on the LGBTQ community, especially amongst minority populations. In 2018, gay and bisexual men accounted for 69% of new HIV diagnoses

¹ U.S. Department of Health & Human Services, "Overview: Data & Trends: U.S: Statistics" (January 16, 2020) <https://www.hiv.gov/hiv-basics/overview/data-and-trends/statistics>

² "U.S. Department of Health & Human Services, About HHS" (March 16, 2020) <https://www.hhs.gov/about/index.html>

and 86% of diagnoses among males.³ Approximately 44% of African American transgender women and 26% of Hispanic/Latina transgender women are living with HIV.⁴ By dismantling anti-discrimination protections for LGBTQ people, your agency has exacerbated COVID-19 risks for communities that bear a disproportionate HIV burden and may already face significant barriers to accessing care. In light of the COVID-19 pandemic, we urge you to immediately halt any plans to finalize these harmful proposed regulations.

While many state and local governments have implemented important policies to reduce the spread of COVID-19, social distancing will not be enough to protect individuals living with HIV. We urge you to lift refill limits of maintenance drugs, including antiretrovirals, for people with chronic conditions such as HIV. Additionally, we urge you to work with LGBTQ and HIV/AIDS-focused organizations to ensure that programs and services related to COVID-19 reach individuals living with HIV. This outreach is especially critical given that more than 30% of people living with HIV are aged 60 and older and may already face higher risk from COVID-19.⁵

Finally, in order to better understand what actions HHS is taking to adequately serve Americans living with HIV/AIDS, please provide responses to the following questions no later than April 3, 2020:

1. How is HHS ensuring that COVID-19 public health messaging includes information for people at increased risk, and specifically for people living with HIV?
2. Has HHS consulted with stakeholders from LGBTQ organizations about how to most effectively disseminate COVID-19 information and services to these populations?
3. Will HHS ensure additional funds to community health centers are distributed in a fashion that accounts for the specific needs of health centers that predominantly serve LGBTQ communities?
4. As HHS advises states on their responsibilities during this pandemic, how will your agency ensure that health workers are directed to provide equal care to all regardless of their actual or perceived sexual orientation, gender identity/presentation, ability, age, national origin, immigration status, race, or ethnicity?
5. Will HHS finalize any proposed rules to rollback anti-discrimination protections for LGBTQ individuals during the COVID-19 pandemic?

As the COVID-19 pandemic continues, we must remember our most marginalized communities. Thank you for your prompt attention to this urgent matter.

³ Centers for Disease Control Prevention, "HIV in the United States and Dependent Areas" (January 3, 2020) <https://www.cdc.gov/hiv/statistics/overview/ataglance.html>

⁴ Centers for Disease Control Prevention, "HIV and Transgender Communities" (April 2019) <https://www.cdc.gov/hiv/pdf/policies/cdc-hiv-transgender-brief.pdf>

⁵ Centers for Disease Control and Prevention, "HIV Among People Aged 50 and Older" (September 18, 2018) <https://www.cdc.gov/hiv/group/age/olderamericans/index.html>

Sincerely,



Robert Menendez
United States Senator

/S/Charles E. Schumer


Charles E. Schumer
United States Senator



Tammy Baldwin
United States Senator

/S/Chris Van Hollen

Chris Van Hollen
United States Senator



Kamala D. Harris
United States Senator

/S/Christopher A. Coons

Christopher A. Coons
United States Senator

/S/Tammy Duckworth

Tammy Duckworth
United States Senator

/S/Amy Klobuchar

Amy Klobuchar
United States Senator

/S/Elizabeth Warren

Elizabeth Warren
United States Senator



Gary Peters
United States Senator



Richard Blumenthal
United States Senator