



April 10, 2019

The Honorable Jerrold Nadler
Chairman, Committee on the Judiciary
U.S. House of Representatives

The Honorable Doug Collins
Ranking Member, Committee on the Judiciary
U.S. House of Representatives

Dear Chairman Nadler, Ranking Member Collins, and Members of the Judiciary Committee:

I am writing in support of H.R. 5, the Equality Act. Research has consistently shown that there is persistent and pervasive discrimination against lesbian, gay, bisexual, and transgender (LGBT) people, on the basis of their sexual orientation and/or gender identity, across multiple spheres of activity that are addressed under the Equality Act. That research further documents the harmful effects of the discrimination on the health and well-being of LGBT people. The Equality Act, which would confirm that discrimination on these bases violates federal law, is critically needed to protect the rights of LGBT people and ensure them equal opportunity under the law.

This letter focuses on the discrimination to which LGBT people have been subjected in one particular area covered under the Equality Act: health care. I am currently the Executive Director of the Williams Institute, an academic research institution affiliated with the UCLA School of Law that conducts independent, rigorous research and analysis of issues affecting the LGBT community. Prior to my tenure at the Institute, I served as the Director of the Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services from August 2014 until January 2017. In that role, I spearheaded and oversaw the issuance of regulations implementing Section 1557 of the Affordable Care Act, which, among other things, bars sex discrimination in federally funded health care and health coverage.

These regulations, issued in final form on May 18, 2016, explicitly interpret the underlying statute to bar discrimination based on sex stereotyping and gender identity. The government adopted this interpretation based in part on the extensive record of discrimination against LGBT people that was submitted in response to the Notice of Proposed Rulemaking issued in September 2015. Even a small sampling of the evidence submitted to the public record demonstrates the breadth and persistence of the adverse treatment and stigma to which LGBT people have been subjected in health care:

- In 2011, the Institute of Medicine (IOM) issued a study on *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding*, available at http://www.ncbi.nlm.nih.gov/books/NBK64806/pdf/Bookshelf_NBK64806.pdf, which discussed evidence of stigma, discrimination, and violence against LGBT people because

of their sexual orientation or gender identities. The Institute of Medicine explained that “[s]ome LGBT individuals face discrimination in the health care system that can lead to an outright denial of care or to the delivery of inadequate care. There are many examples of manifestations of enacted stigma against LGBT individuals by health care providers. LGBT individuals have reported experiencing refusal of treatment by health care staff, verbal abuse, and disrespectful behavior, as well as many other forms of failure to provide adequate care.” *Id.* at 62. Furthermore, “[f]ear of stigmatization or previous negative experiences with the health care system may lead LGBT individuals to delay seeking care.” *Id.* (discussing “felt stigma”); *see also id.* at 63-64 (discussing “internalized stigma” and other personal barriers to care). *See Comments Submitted by Scholars Affiliated with the Williams Institute, UCLA School of Law* (November 9, 2015), available at <https://www.regulations.gov/document?D=HHS-OCR-2015-0006-0001>.

- According to comments received by OCR, in response to a survey conducted by Lambda Legal to assess health care discrimination against LGBT people and people living with HIV, more than half of all respondents reported that they had experienced at least one of the following types of discrimination in care: being refused needed care; health care professionals refusing to touch them or using excessive precautions; health care professionals using harsh or abusive language; being blamed for their health care status; or health care professionals being physically rough or abusive. *See Lambda Legal, When Health Care Isn't Caring: Lambda Legal's Survey on Discrimination Against LGBT People and People Living with HIV 5* (2010), available at http://www.lambdalegal.org/sites/default/files/publications/downloads/whcic-report-when-health-care-isnt-caring_1.pdf (explaining that “almost 56 percent of lesbian, gay or bisexual (LGB) respondents had at least one of these experiences; 70 percent of transgender and gender-nonconforming respondents had one or more of these experiences; and nearly 63 percent of respondents living with HIV experienced one or more of these types of discrimination in health care. In almost every category, transgender and gender-nonconforming respondents reported higher levels of discrimination by health care providers.”). *See Comments Submitted by National Center for Lesbian Rights* (November 9, 2015), available at <https://www.regulations.gov/document?D=HHS-OCR-2015-0006-0001>.

The regulatory record further contains evidence of persistent discrimination against subgroups of LGBT people. For example, according to commenters, LGBT people of color and people with lower socioeconomic status experience particular barriers to accessing health care. According to one report,

- Only 64 percent of LGB Latino adults had health insurance coverage compared to 77 percent of all LGB adults and 82 percent of the heterosexual adult population.
- Thirty percent of LGB African-American adults were likely to delay or not get needed medication compared to 19 percent of African-American heterosexual adults.
- Twenty-six percent of LGB Latino adults did not have a regular source for basic health care.

- Only 35 percent of LGB African-American women had had a mammogram in the prior two years, compared to 57 percent of all LGB women and 62 percent of all heterosexual women.

See Center for American Progress, *Health Disparities in LGBT Communities of Color: By the Numbers* (2010), available at <https://www.americanprogress.org/issues/lgbt/news/2010/01/15/7132/health-disparities-in-lgbt-communities-of-color/>.

Commenters also noted that lesbians encounter significant barriers to accessing health care. For example, studies have shown that lesbians get less routine health care than other women, including colon, breast, and cervical cancer screening tests. Commission on Health Care for Underserved Women, Am. Coll. Of Obstetricians and Gynecologists, *Health Care for Lesbians and Bisexual Women, Committee Opinion No. 525 1* (2012), cited in *Comments Submitted by National Center for Lesbian Rights* (November 9, 2015), available at <https://www.regulations.gov/document?D=HHS-OCR-2015-0006-0001>. Moreover, while lesbians and bisexual women are as likely as heterosexual women to develop cervical cancer, they are up to ten times less likely to undergo regular screening for the disease. The Fenway Institute, *Policy Focus: Promoting Cervical Cancer Screening among Lesbians and Bisexual Women 1* (2013), available at http://www.lgbthealtheducation.org/wp-content/uploads/Cahill_PolicyFocus_cervicalcancer_web.pdf, cited in *Comments Submitted by National Center for Lesbian Rights* (November 9, 2015), available at <https://www.regulations.gov/document?D=HHS-OCR-2015-0006-0001>. Lesbians are less likely to access preventive care compared to other women, and both lesbians and bisexual women are less likely to be insured compared to other women. And lower rates of regular screening put lesbians at greater risk of late diagnosis, when the disease is less treatable. *Fenway Institute at 2*; see generally *Comments Submitted by National Center for Lesbian Rights* (November 9, 2015), available at <https://www.regulations.gov/document?D=HHS-OCR-2015-0006-0001>.

Many of the public comments recounted individual experiences of discrimination in health care and health coverage. For example, instances of discrimination reported in the comments filed by the National Center for Transgender Equality included:

- one transgender person, who described recurring and invasive harassment in emergency rooms: “I’ve have doctors call in other doctors to gawk, and even ask to take photos [of my body parts]...and one asked to bring her class to my room.”
- Another transgender person who shared similar experiences: “I’ve experienced forced pelvic exams from health care professionals because they wanted to see my [genitals]. I was billed for this even though I was seeking care for allergies and tonsillitis.”
- A transgender man hospitalized in a gynecological unit for treatment of uterine cancer who reported that “even though I was not there for anything trans related, several nurses repeatedly asked me about my “sex change operation.” They went out of their way to remind me that I was a man on the gynecological unit and my pages for nurses often went answered last. I had one nurse ask me incredibly personal questions related to being trans hours after I was wheeled out of surgery.

It was degrading, triggering, and wholly unwelcomed. I had to deal with this all while recovering from cancer. No one could see me as a person; they saw me as an intruder.”

- Another transgender man who described being exploited by an endocrinologist while recovering from a traumatic brain injury: “[the endocrinologist] massaged my breasts...for a long time—not for any medical reason, but because he was curious to feel how testosterone and binding had changed my chest. He did not ask consent for this. Then, he asked me to describe my clitoris to him in great detail. After I did...he asked me to remove my pants and underwear so that he could inspect my clitoris and see my vagina....”

See *Comments Submitted by the National Center for Transgender Equality* (November 9, 2015), available at <https://www.regulations.gov/document?D=HHS-OCR-2015-0006-0001>

Case law and administrative complaints also demonstrate the types of discrimination to which LGBT people report they have been subject in health care. For example, in *Prescott v. Rady Children's Hospital*, 265 F. Supp. 3d 1090 (S.D. Cal. 2017), plaintiffs alleged a pattern of misgendering and harassment of a transgender boy that ultimately led to his suicide. See also *Rumble v. Fairview Health Services*, 2015 WL 1197415 (D. Minn. 2015) (alleging harassment, physical abuse and misgendering when transgender man sought care at a hospital); U.S. Department of Health and Human Services, *Voluntary Resolution Agreement Between the U.S. Department of Health and Human Services Office for Civil Rights and the Brooklyn Hospital Center* (2015), available at <https://www.hhs.gov/sites/default/files/ocr/civilrights/activities/agreements/TBHC/vra.pdf> (resolving claim that hospital had failed to assign patient to a room consistent with her gender identity); Center for American Progress, *The ACA's LGBTQ Nondiscrimination Regulations Prove Crucial* (outlining claims made in 31 complaints of gender identity discrimination filed with OCR between March 23, 2010 and January 20, 2017), available at <https://cdn.americanprogress.org/content/uploads/2018/03/06122027/ACAnondiscrimination-brief2.pdf> (2018).

Moreover, research suggests that supportive policies for LGBT people improve the uses of health care by this community. For example, one recent study has determined that, when examining a policy index including state-level transgender-specific policies (non-discrimination protections, religious exemption laws, private health insurance policies, Medicaid policies, changing a gender marker on a state ID, and requirements for a legal name change), living in states with more protective policies (and fewer stigmatizing ones) was associated with fewer reports of non-use of healthcare due to fears of mistreatment. For each additional point on the policy index indicating a more protective policy, there was a 3% decrease in the likelihood of not using care due to fear of mistreatment. Goldenberg, T., Harper, G.W., Reisner, S., Gamarel, K., Kahle, E., & Stephenson, R, *State-level transgender-specific policies, race/ethnicity, and health care use among transgender and gender diverse people in the United States*. (April 2019) (paper to be presented at the Population Association of America 2019 Annual Meeting, Austin, TX).

Although comments in the record for the rulemaking proceeding under Section 1557 do not break out discrimination in public, as opposed to private, health care facilities, I have no reason to believe that the patterns of adverse treatment and stigma are any different between the two.

The foregoing is a sample of some of the challenges that LGBT people face in accessing health care and is a testament to the critical need for the Equality Act to provide redress for discrimination in this sphere.

Sincerely,

A handwritten signature in black ink, appearing to read "Jocelyn Samuels". The signature is fluid and cursive, with the first name "Jocelyn" and last name "Samuels" clearly distinguishable.

Jocelyn Samuels, J.D.