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HHS moves again to enable anti-LGBT discrimination in health care

On the heels of creating a new conscience division at the Department of Health & Human Services, the Trump administration has proposed a new religious exemption that critics say would allow widespread discrimination against women seeking abortions and against LGBT people.

Camilla Taylor, senior counsel for Lambda Legal, told the Washington Blade the proposal is “a travesty, outrageous” in terms of its potential to allow denial of medical services for LGBT people.

“It undoubtedly will result in increased denials of service to LGBT people,” Taylor said. “It’s intended to facilitate federally funded health care providers denying service not just to LGBT people, but to women and other vulnerable groups.”

Mara Keisling, executive director of the National Center for Transgender Equality, said in a conference call with reporters the proposal ignores federal laws against discrimination in health care.

“The Department of Health & Human Services ... proposed a regulation that goes well beyond existing laws to create sweeping, dangerous exemptions that would encourage health care providers to pick and choose which patients they will and won’t treat,” Keisling said.

The language of [the 216-page proposal](#) is geared more toward allowing medical providers to deny abortion-related services on the basis of religious objections, but it contains broad language allowing for exemptions for any reason as well as code words critics say are intended to deny LGBT people medical services.

A provision allowing for exemptions on “sterilization” procedures, for example, is seen as a slur meant to include gender reassignment surgery for transgender people. Other provisions condoning religious counseling are construed as allowing federal payments for widely discredited “ex-gay” conversion therapy.

Taylor said the although rule is specific to abortion, much of the broader language in the proposal would impact access to health care for LGBT people.

“It allows federally funded accredited health care providers to deny services on religious or moral beliefs, whatever the hell that means,” Taylor said.

The proposed rule comes one day after the creation of the Conscience & Religious Freedom Division with the HHS Office for Civil Rights, which has been panned as a tool for enabling the kind of denial of services enabled in the religious freedom rule.

“It’s weaponizing the Office of Civil Rights within HHS to target people for denial of health care at taxpayer expense,” Taylor said.

On the same day as the proposed rule was published, HHS announced a similar reversal of Obama-era policy to allow states to limit access to Medicaid to health institutions, including Planned Parenthood, that provide services to which the states object.

In contrast to the Trump administration, the Obama administration issued a rule interpreting the provision barring sex discrimination under the Affordable Care Act to ban medical providers from discriminating against transgender patients or women who have had abortions. After a legal challenge, however, HHS was enjoined from enforcing that rule as a result of [a court order](#) issued by U.S. District Judge Reed O’Connor in Texas.

Even with the Trump administration’s proposed rule, the provision of Obamacare barring sex discrimination, Section 1557, remains in effect. Individuals who feel they faced anti-LGBT discrimination in the health care system still have a private right to sue in federal court under that underlying statute.

Taylor, however, said many courts have put these lawsuits on hold in anticipation of new regulations coming from the Trump administration.

“It’s unclear what remedy people will have in court,” Taylor said. “We would argue that those courts should take action, should remedy the discrimination.”

The proposed rule isn’t yet in effect. The proposal allows for a comment period of 60 days, which will proceed the finalization of the rule at a later time.

As such, many LGBT legal groups said at this time they’re unable to sue the federal government over the rule and will wait until the rule is made final.

Shannon Minter, legal director for the National Center for Lesbian Rights, said no litigation against the proposal is planned at this time.

“There is nothing in the proposed rule that specifically targets LGBT people, though some of the broad proposed definitions would open the door to potential discrimination against LGBT people and others,” Minter said. “We are still analyzing the potential ramifications. Especially since the rule is not yet final, we are not planning litigation at this time.”

Taylor said a Lambda Legal lawsuit against the new rule is “very likely,” but the timing isn’t yet clear as the comment period process unfolds.

“We are already asking people to call us if they’ve been denied health care, and the creation

of this new HHS unit, I think, is an invitation to health care providers to start denying treatment to people now in anticipation that the administration is going to assist them,” Taylor said. “So there may be specific lawsuits that come up prior to the ruling going into effect that concern the administration’s efforts to provide exemptions to non-discrimination requirements.”

<https://www.washingtonblade.com/2018/01/19/another-step-from-hhs-to-enable-anti-lgbt-discrimination-in-health-care/>

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The Hill, DC, USA

Trump administration amasses striking anti-LGBT record in first year

By Sean Cahill, Opinion contributor — 01/19/18 04:15 PM EST

*The views expressed by contributors are their own and not the view of The Hill.*

At the 2016 Republican Convention, in response to a massacre/terrorist attack by an armed assailant that killed 49 mostly LGBT, Latino club-goers at the Pulse Nightclub in Orlando, candidate Donald Trump vowed, “As your president, I will do everything in my power to protect our LGBTQ citizens from the violence and oppression of a hateful foreign ideology. Believe me.”

Even though the Republican Party platform denounced sexual orientation and gender identity nondiscrimination laws as reflecting “an ideology alien to America’s history and traditions,” Trump’s comments were hailed as historically pro-LGBT for a Republican convention. Once in office, however, the Trump administration has followed the lead of the GOP rather than Trump himself, amassing a striking record of executive branch actions that strip LGBT people of nondiscrimination protections.

Most alarmingly, President Trump and Attorney General Sessions have taken every opportunity to promote discrimination against LGBT people in health care, social services, private business, employment, and state- and federally-funded government services under the guise of free exercise of religion.

This week, the Department of Health and Human Services Office of Civil Rights publicly announced a new “[Conscience and Religious Freedom Division](#).”

The Washington Post [reported](#) that the language describing the new office is “broad” and that healthcare experts believe the new office is likely to defend those who refuse to treat “transgender patients or those seeking to transition to the opposite sex.” Making matters even worse is that Trump has successfully nominated numerous judges throughout the federal court system who support these policies, including Supreme Court Justice Neil Gorsuch.

In 2018, discrimination equals freedom — Orwell would be pleased.

Some of Trump’s anti-LGBT actions are symbolically important, like not declaring June LGBT Pride Month, as Presidents Obama and Clinton did, and not mentioning gay and bisexual men or transgender women—groups disproportionately burdened by HIV here and globally—in his World AIDS Day declaration. But as documented in a new [policy brief](#) by The Fenway Institute, most are much more serious. Trump has rolled back the collection of sexual orientation and gender identity data on surveys, which was expanded under the previous

administration.

His administration has taken numerous actions to undermine the Affordable Care Act, which cut rates of insurance among lesbian, gay and bisexual people in half. It also helped many people living with HIV access insurance who previously could not get it and sharply reduced racial/ethnic disparities in health insurance coverage, a key driver of racial/ethnic health disparities.

Trump has failed to appoint a Director of the White House Office of National AIDS Policy for the first time since President Clinton created it, and the Centers for Disease Control put the kibosh on using seven terms in descriptions of the agency's work, including "transgender" and "evidence-based."

Trump's budget proposal would gut funding for the Ryan White HIV/AIDS Program and the CDC. A proposed \$1.1 billion cut to global HIV prevention and treatment would cause thousands of adults and children to lose treatment, and many would die. Progress cutting new global HIV infections in half over the past 15 years would be reversed.

Trump has also reversed American leadership to promote an end to anti-LGBT persecution around the world. President George W. Bush's administration included anti-LGBT persecution in its State Department's country reports, and President Obama's State Department promoted LGBT equality as a goal of U.S. foreign policy.

The Trump administration removed pro-LGBT content from the department's website, and does not prioritize human rights. Over the past year several governments — Tanzania, Chechnya, and Indonesia — have unleashed campaigns of persecution against gay men and LGBT people.

Candidate Trump promised to protect LGBT people against another terrorist attack fueled by fanatical, intolerant distortions of Islam. Yet as president, he is enacting policies pushed by conservative Christian Americans that are causing great harm to LGBT people, and that many would argue distort the meaning of Christianity.

These policies represent a major threat to the health and well-being of LGBT Americans. They are likely to increase minority stress and reduce access to health care. And they are out of step with the American public, 69 percent of whom support LGBT nondiscrimination laws covering employment, housing, and public accommodations.

*Sean Cahill, PhD, is Director of Health Policy Research at the Fenway Institute and lead author of "One year in, Trump Administration amasses striking anti-LGBT record."*

<http://thehill.com/opinion/campaign/369790-trump-administration-amasses-striking-anti-lgbt-record-in-first-year>

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