

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

November 22, 2017

Submitted electronically via regulations.gov

U.S. Department of Health & Human Services
Hubert H. Humphrey Building
200 Independence Avenue SW
Washington, DC 20201

Re: Request for Information Regarding Faith-Based Organizations

Justice in Aging appreciates the opportunity to respond to the Department of Health and Human Services (HHS) Request for Information (RFI) on Removing Barriers for Religious and Faith-Based Organizations to Participate in HHS Programs and Receive Public Funding.

Justice in Aging is an advocacy organization with the mission of improving the lives of low-income older adults. We use the power of law to fight senior poverty by securing access to affordable health care, economic security and the courts for older adults with limited resources. We have decades of experience with Medicare and Medicaid, with a focus on the needs of low-income beneficiaries and populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency.

Because we do not represent providers or religious or faith-based organizations, our comments focus on the impact policy changes could have on consumers. Specifically, we urge HHS to ensure that its policies continue to protect the rights and needs of low-income older adults, especially LGBT individuals.

We agree that religious and faith-based organizations serve an important role in providing health care and other services to older adults, people with disabilities, and their families. We believe that faith-based organizations should be able to continue to fully participate in HHS programs and receive public funding. However, equally important to removing barriers that may discourage their participation, is ensuring that all health care providers, whatever their religious beliefs or moral convictions, adhere to nondiscrimination laws and the medical and health-related standard of care.

We also believe that HHS's commitment to reducing health disparities and ensuring consumers have access to quality health care necessitates careful consideration of nondiscrimination and other consumer protections when examining barriers for providers to participate in HHS programs. Stark health disparities exist across race, gender, sexual orientation, and poverty lines, and older adults are no exception.

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In our advocacy for low income older adults, one area where we have seen a clear link between discrimination and health disparities is among LGBT older adults. LGBT older adults face pronounced health disparities and higher poverty rates compared to their heterosexual and cisgender peers due in large part to historical and ongoing discrimination.¹ Furthermore, LGBT elders are more likely to be single, childless, estranged from their biological family, and reliant on families of choice, such as friends and other loved ones. Because they do not have traditional support systems in place, many LGBT elders rely on nursing homes or other long-term care facilities.²

Unfortunately, many LGBT older adults suffer discrimination in health care in these settings. In a survey of LGBT seniors reported in our publication, *Stories from the Field*, we found numerous cases where LGBT older adults experienced discrimination in long-term care facilities ranging from verbal and physical harassment, to visiting restrictions and isolation, to being denied basic care such as a shower or being discharged or refused admission.³ In addition to being denied care or provided inadequate care, LGBT older adults and their loved ones may be afraid to seek care because they are not treated with dignity and respect. In several cases, LGBT older adults reported being “prayed over” without their consent or being told they would go to hell.⁴

All providers must ensure that all individuals whom they serve are treated with dignity and respect. No entity should be permitted to use religion to justify denying the rights of any individuals seeking or using health care services from the organization.

We believe that HHS’s policies with respect to all providers, including religious and faith-based organizations, are critical to ending discrimination and ensuring all older adults have equal access to health care services through HHS programs. Therefore, in considering how to strengthen participation of faith-based organizations in HHS programs, we strongly urge HHS to continue its oversight and enforcement activities addressing discriminatory practices by health care providers and not to waive or diminish Section 1557 of the Affordable Care Act (ACA) or its implementing regulations⁵ or other vital civil rights laws and regulations that prohibit discrimination, including Title VI of the Civil Rights Act of 1964, Title IX of the Education

¹ The *Aging and Health Report* from the National Institutes of Health (NIH) and National Institute on Aging (NIA) outlines a number of disparities, including: lesbian, gay and bisexual older adults face higher rates of disability and mental health challenges; older bisexual and gay men face higher rates of physical health challenges; bisexual and lesbian older women have higher obesity rates and higher rates of cardiovascular disease; and transgender older adults face greater risk of suicidal ideation, disability, and depression compared to their peers. Fredriksen-Goldsen et. al., *The Aging And Health Report: Disparities And Resilience Among Lesbian, Gay, Bisexual, And Transgender Older Adults* (November 2011), available at www.lgbtagingcenter.org/resources/resource.cfm?r=419.

² SAGE (Services and Advocacy for Gay, Lesbian, Bisexual & Transgender Elders) and Movement Advancement Project, *Improving the Lives of LGBT Older Adults*, (March 2010), available at www.sageusa.org and <http://www.lgbtmap.org>.

³ Justice in Aging et al., *LGBT Older Adults In Long-Term Care Facilities: Stories from the Field* (updated June 2015), available at www.justiceinaging.org/customers.tigertech.net/wp-content/uploads/2015/06/Stories-from-the-Field.pdf

⁴ *Id.*, p. 11.

⁵ 81 Fed. Reg. 31376 (May 18, 2016).

Amendments of 1972, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973. We urge HHS to build on the strengths and compassion that characterize faith-based organizations and work closely with them and all providers, regardless of their religious or moral convictions, to develop best practices to address health disparities, increase cultural competency among staff, and ensure respect and dignity for everyone they serve.

Thank you for considering our comments. If any questions arise concerning this submission, please contact me at jgoldberg@justiceinaging.org.

Sincerely,

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

Jennifer Goldberg
Directing Attorney