

Alex M. Azar II  
Secretary  
U.S. Department of Health and Human Services

**2019 BOARD OF DIRECTORS**

**Executive Committee**

December 19, 2019

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**Re: RIN Number** 0991-AC16, Health and Human Services Grant Regulation

**Elizabeth M.S. Krause, ScM**  
Vice Chairperson

Dear Secretary Azar:

**Chuen L. Yee, MD**  
Secretary

The Asian & Pacific Islander American Health Forum (APIAHF) submits this comment letter in response to the Department of Health and Human Services (HHS) Grant Regulation published in the Federal Register on November 19, 2019. **We strongly oppose the proposed regulation as discrimination has no place in HHS programs. The proposed regulation and accompanying notice seek to strip non-discrimination protections from LGBTQ people, religious minorities and women across a broad range of HHS programs from HIV and STI prevention to foster care and refugee resettlement.**

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APIAHF is the nation's leading health policy organization working to advance the health and well-being of over 20 million Asian Americans, Native Hawaiians and Pacific Islanders (AA and NHPI) across the U.S. and territories. APIAHF works to improve access to and the quality of care for communities who are predominately immigrant, many of whom are limited English proficient, and may be new to the U.S. health care system or unfamiliar with private or public coverage. We have longstanding relationships with over 100 community-based organizations across 34 states and the Pacific, to whom we provide capacity building, advocacy and technical assistance.

As such, we have a strong understanding of the needs and barriers experienced by AA and NHPI communities across the country and the impact that eliminating non-discrimination protections would have on those individuals and communities. For over 32 years, APIAHF has worked to protect and strengthen civil rights in health care, including working extensively on protections on the basis of national origin discrimination. APIAHF and our partners have consistently advocated for the importance of civil rights in health care and across HHS programs. HHS has an affirmative obligation to ensure that discrimination has no place in its programs. Indeed this is why, after an extensive notice and comment period, the final 2016 rule which HHS now seeks to upend stated "it is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors such as age, disability, sex, race, color, national origin, religion, gender identity, or sexual orientation."

If the proposed rule is adopted, HHS would cease to enforce nondiscrimination protections on the bases of religion, sex, gender identity and sexual orientation. As such, we view this effort as part of a broader effort by the Administration to limit the civil rights protections of minority communities. Further, the economic impact of this rule is significant and impacts \$500 billion in HHS grants and programs, totaling one-fourth of all federal spending.

Below are just a few illustrative examples of the impact on AA and NHPI individuals and communities:

- **Ignores the intersectional nature of protected identities and compounds existing discrimination and barriers.** The proposed rule, by seeking to limit nondiscrimination protections to those explicitly identified in federal statutes, ignores the intersections of various identities and civil rights and compounding discrimination experienced by LGBTQ persons who are racial and ethnic minorities. As such, the proposed rule allows taxpayer funded discrimination on the basis of identities that impact significant populations across the country.
- **Result in qualified prospective families being turned away from foster care opportunities on the basis of their religion, sexual orientation or gender identity.** Of the currently 437,283 children in foster care, 2,112 are Asian American and 1,053 are Native Hawaiian and Pacific Islander.<sup>1</sup> The proposal would limit the pool of available homes and result in 20,000 who would age out without finding forever families. In addition, 1 in 5 youth in foster care identify as LGBTQ. By allowing discrimination in HHS-funded foster programs, the proposed rule would harm youth in foster care by denying them the ability to find families who respect their identities and ignores their needs.
- **Deny life-saving health care to AA and NHPI communities by permitting HIV prevention and education programs to serve only non-transgender and straight people.** Under the proposed rule, such programs could refuse to serve or even recognize LGBTQ people. According to the Centers for Disease Control and Prevention, about 9 in 10 Asian American men who received an HIV diagnosis identify as gay or bisexual.<sup>2</sup> The rule would impact the populations most affected by HIV. Similarly, federally-funded substance use prevention and treatment programs could refuse services to LGBTQ people.
- **Threaten the ability of low-income children with same-sex parents or transgender youth to receive educational support through Head Start programs.** This is particularly problematic for children in families experiencing homelessness where LGBTQ children are 120% more likely

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<sup>1</sup> Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, AFCARS Report, Aug. 22, 2019. Available at <https://www.acf.hhs.gov/sites/default/files/cb/afcarsreport26.pdf>.

<sup>2</sup> Centers for Disease Control & Prevention, HIV and Asians. Available at <https://www.cdc.gov/hiv/group/raciaethnic/asians/index.html>.

to experience homelessness. Twenty-seven percent of AA children were enrolled in Head Start from 2016-2017.<sup>3</sup>

- **Discriminate against unaccompanied immigrant children by forcing them to be housed in a shelter that is not consistent with their gender identity or to be held in isolation.**

In summary, the proposed rule directly contradicts the mission of HHS, which is to ensure the health and well-being of all Americans. For these reasons, APIAHF strongly opposes the proposed rule. For questions, please contact Juliet K. Choi, APIAHF Chief of Staff and Senior Vice President for Government and External Relations at [jchoi@apiahf.org](mailto:jchoi@apiahf.org).

Sincerely,



Kathy Ko Chin,

APIAHF President & CEO

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<sup>3</sup> Children's Trends, Head Start. Available at <https://www.childtrends.org/indicators/head-start>.