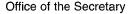
DEPARTMENT OF HEALTH & HUMAN SERVICES



Director Office for Civil Rights Washington, D.C. 20201

July 12, 2012

Maya Rupert, Esq. Federal Policy Director National Center for Lesbian Rights 1325 Massachusetts Ave. NW, Suite 700 Washington DC 20005

OCR Transaction Number: 12-000800

Dear Ms. Rupert:

N SERVICES

Thank you for your letter to Secretary Kathleen Sebelius, which was forwarded for reply to the U.S. Department of Health and Human Services (HHS), Office for Civil Rights (OCR). In your letter, you requested that we issue guidance clarifying that sex-based discrimination includes discrimination on the basis of gender identity and sex stereotypes under Section 1557 of the Affordable Care Act.

As you may know, OCR enforces Section 1557 of the Affordable Care Act (42 U.S.C. 18116), which provides that an individual shall not be excluded from participation in, be denied the benefits of, or be subjected to discrimination on the grounds prohibited under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* (race, color, national origin), Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.* (sex), the Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.* (age), or Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (disability), under any health program or activity, any part of which is receiving Federal financial assistance, or under any program or activity that is administered by an Executive Agency or any entity established under Title I of the Affordable Care Act or its amendments. OCR has enforcement authority with respect to health programs and activities that receive Federal financial assistance from HHS or are administered by HHS or any entity established under Title I of the Affordable Care Act or its amendments.

We agree that Section 1557's sex discrimination prohibition extends to claims of discrimination based on gender identity or failure to conform to stereotypical notions of masculinity or femininity and will accept such complaints for investigation. Section 1557 also prohibits sexual harassment and discrimination regardless of the actual or perceived sexual orientation or gender identity of the individuals involved.

The HHS OCR is currently accepting and investigating complaints filed under Section 1557. We thoroughly review each complaint received; employ a case-by-case analysis of the facts and the relevant law; make a carefully considered decision on jurisdiction; and when warranted, issue a

Page 2 – Ms. Maya Rupert

finding that discrimination has (or has not) occurred. The HHS OCR intends to issue future guidance on Section 1557.

Until then, to make sure individuals, community organizations and providers know their rights and responsibilities, we ask you to help promote our website, <u>www.hhs.gov/ocr</u>, and:

- Learn about and connect with any one of our ten OCR regional offices http://www.hhs.gov/ocr/office/about/rgn-hqaddresses.html
- Learn how to file a complaint with OCR if you think your rights have been violated http://www.hhs.gov/ocr/civilrights/complaints/index.html
- Visit the HHS OCR You Tube channel (search for HHS OCR) for additional videos on topics like "Your Health Information, Your Rights" or "Communicating with Family, Friends and others Involved in Your Care".

I also want to underscore what we discussed and shared during OCR's January 30, 2012 LGBT/HIV Stakeholders Listening Session: my office is continuing and will continue to increase our outreach and education efforts with individuals, community organizations and providers regarding their rights and responsibilities under Section 1557. The Office for Civil Rights is absolutely committed to working with individuals and advocates to improving the health and well-being of members of the lesbian, gay, bisexual and transgender communities, and of course, the commitment to sincerely engage and partner with the LGBT community is a Department-wide commitment as demonstrated by the Secretary (see

http://www.hhs.gov/secretary/about/lgbthealth.html) and the 2012 HHS LGBT Coordinating Committee Report which is available at

http://www.hhs.gov/secretary/about/2012 lgbt an rpt.pdf.

Again, thank you for your leadership on these critical matters to the LGBT community and for your very thoughtful letter, and we look forward to our growing partnership and work together.

Sincerely Leon Rodriguez

Page 3 – Ms. Maya Rupert

cc:

Michael Adams, Esq. Executive Director SAGE: Services and Advocacy for GLBT Elderly 305 7th Avenue, 15th Floor New York, NY 10001

Eliza Byard, Ph.D. Executive Director Gay, Lesbian & Straight Education Network 90 Broad Street, 2nd Floor New York, NY 10004

Leslie Calman, Ph.D. Executive Director The Mautner Project 1300 19th Street, N.W., Suite 700 Washington, DC 20036

Rea Carey, M.P.A. Executive Director National Gay and Lesbian Task Force 1325 Massachusetts Ave., N.W., Suite 600 Washington, DC 20005

Kevin M. Cathcart, Esq. Executive Director Lambda Legal 120 Wall Street, 19th Floor New York, NY 10005-3904

Chad Griffin President Human Rights Campaign 1640 Rhode Island Ave., N.W. Washington, DC 20036-3278

Page 4 – Ms. Maya Rupert

Hutson W. Inniss Executive Director National Coalition for LGBT Health 1325 Massachusetts Ave., N.W. Washington, DC 20005

Michael Keefe Executive Director Transgender Forge, Inc. P.O. Box 4186 Seminole, FL 33775

Mara Keisling Executive Director National Center for Transgender Equality 1325 Massachusetts Ave., N.W., Suite 700 Washington, DC 20005

Anthony D. Romero, Esq. Executive Director American Civil Liberties Union 125 Broad Street, 18th Floor New York, NY 10004

Hector Vargas, J.D. Executive Director Gay and Lesbian Medical Association 1326 18th Street, N.W., Suite 22 Washington, DC 20036