



HUMAN  
RIGHTS  
CAMPAIGN

June 18, 2020

The Honorable Alexander M. Azar II  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Washington, DC 20201

RE: Demand Letter Addressing Nondiscrimination in Health and Health Education Programs or Activities RIN 094-AA11

Dear Secretary Azar,

On June 12, 2020, the Department of Health and Human Services (“Department”) announced the pending publication of the above referenced final rule (the “Final Rule”) interpreting Section 1557 of the Affordable Care Act (“ACA”). The Final Rule, in part, eliminates key provisions defining prohibited sex discrimination, including language stating that discrimination on the basis of sexual orientation, gender identity or transgender status constitutes prohibited sex-based discrimination under the statute. This portion of the rule is plainly inconsistent with the Supreme Court of the United States’ recent ruling in *Bostock v. Clayton County*, Nos. 7-1618, 17-1623 and 18-107, 2020 U.S. LEXIS 3252 (June 15, 2020) and a long line of federal appellate court decisions, recognizing that sexual orientation and gender identity discrimination constitute prohibited sex-based discrimination. The announcement of the Final Rule, and its apparent departure from clearly established legal precedent, has resulted in significant anxiety and ongoing harm among LGBTQ people currently seeking healthcare and related services. It has also contributed to increasing confusion regarding the obligations of healthcare providers and insurance companies to provide non-discriminatory access to federally-funded health and health education programs.

The Human Rights Campaign Foundation asserts that publication of the Final Rule would violate federal statutory and Constitutional law and demands that the Department immediately rescind the publication of the Final Rule and republish a rule, consistent with law, that clearly defines prohibited sex discrimination to include discrimination on the basis of sexual orientation and gender identity.

Sincerely,

Alphonso B. David  
President  
Human Rights Campaign Foundation