

# United States Senate

WASHINGTON, DC 20510

December 18, 2019

The Honorable Alex M. Azar II  
Secretary  
Department of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Dear Secretary Azar:

We write to express our strong opposition to the decision by the Department of Health and Human Services (HHS or the Department) to cease enforcing existing federal nondiscrimination regulations (45 CFR Part 75) and issue a Notice for Proposed Rulemaking (NPRM) (RIN 0991-AC16) that would allow discrimination in HHS-funded awards. These actions demonstrate that HHS condones sweeping taxpayer-funded discrimination based on sex (including sexual orientation and gender identity) or religion. Moreover, the notice of non-enforcement essentially bypasses the rulemaking process and allows the Department to immediately permit this discrimination. This is yet another step in the Trump Administration's efforts to erode civil rights protections and leave millions of people across the country again subject to discrimination. Taken together, these actions leave vulnerable populations unable to access the services they need. We strongly urge the Department to enforce existing federal nondiscrimination regulations that protect against discrimination based on sex and religion and rescind this proposed rule.

The proclaimed mission of HHS is "to enhance and protect the health and well-being of all Americans." As part of this mission, HHS annually awards more than \$500 billion in taxpayer-funded grants and contracts to support a wide range of critical programs and services including for public health, early childhood education, youth homelessness, the elderly, federally funded adoption and foster care, and much more. By no longer enforcing existing nondiscrimination regulations, HHS is allowing funding recipients to cite their religious faith as justification for choosing not to serve certain people—potentially leaving people of various religious affiliations and LGBTQIA+ people without the services necessary to support their health and well-being. This practice runs counter to HHS' mission.

The proposed rule purportedly addresses the concern that faith-based providers experience hardship when they are asked to adhere to non-discrimination regulations and HHS' concern that adhering to existing nondiscrimination requirements violates the Religious Freedom Restoration Act (RFRA). However, this is an erroneous interpretation of RFRA as the congressional intent of this law was to prevent religious-based discrimination rather than to facilitate discrimination.

The proposed rule also removes any requirement that entities seek approval or provide justification for noncompliance with nondiscrimination laws. Under the current rule, grantees were required to seek waivers, which allowed stakeholders an opportunity to engage with HHS regarding the proposed waiver. This process also provided notice should such waivers be granted.

This non-enforcement decision and proposed rule has a staggering reach for vulnerable populations. An Administration for Community Living grantee could claim a right to deny a woman home health services because she does not share the organization's proclaimed faith. A federally-funded early childhood center could turn away a child for having LGBTQIA+ parents. A faith-based foster care agency receiving taxpayer dollars could refuse to house and care for LGBTQIA+ youth or turn away qualified, loving LGBTQIA+ parents willing to foster and adopt, reducing the number of available foster homes. The decision may also impact important health programs like the Children's Health Insurance Program and other grant-based health programs like the Maternal, Infant, and Early Childhood Home Visiting Program. Domestic violence and child abuse response services could refuse to serve LGBTQIA+ people. These are just a few examples of the many potential consequences of HHS' non-enforcement decision and proposed rule.

It is unconscionable that HHS has disregarded essential nondiscrimination protections, chosen to no longer enforce them and has pursued a rollback of the very protections that ensure HHS funding benefits all people in an equitable way. We demand that you reverse the non-enforcement decision and withdraw the proposed rule.

Sincerely,



Ron Wyden  
United States Senator



Patty Murray  
United States Senator



Charles E. Schumer  
United States Senator



Sheldon Whitehouse  
United States Senator



Bernard Sanders  
United States Senator



Sherrod Brown  
United States Senator



Kirsten Gillibrand  
United States Senator



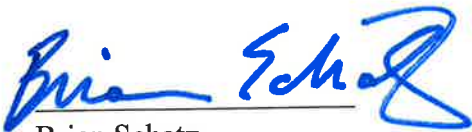
Edward J. Markey  
United States Senator




Tammy Baldwin  
United States Senator



Tim Kaine  
United States Senator



Brian Schatz  
United States Senator



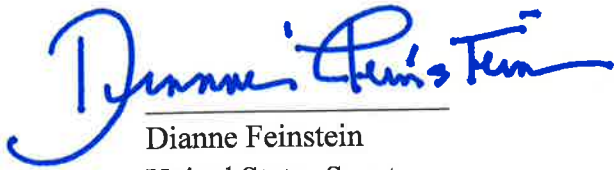
Jeffrey A. Merkley  
United States Senator



Catherine Cortez Masto  
United States Senator

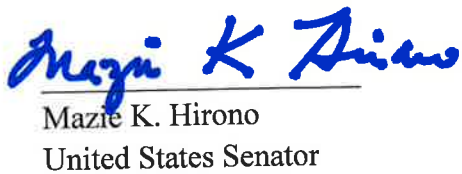


Christopher Murphy  
United States Senator



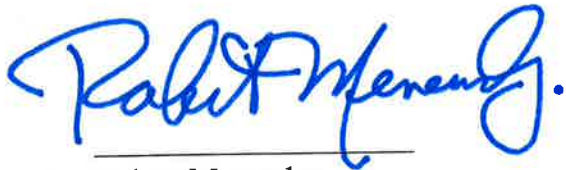
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Dianne Feinstein  
United States Senator



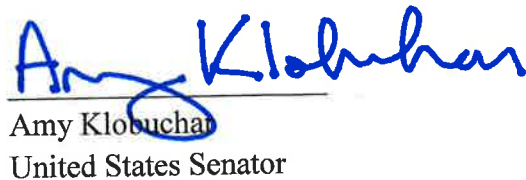
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Mazie K. Hirono  
United States Senator



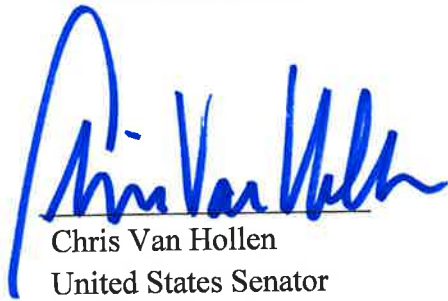
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Robert Menendez  
United States Senator



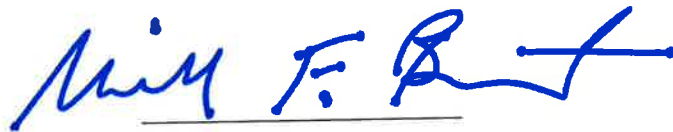
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Amy Klobuchar  
United States Senator



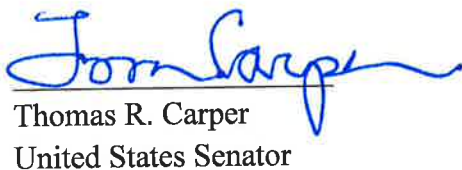
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Chris Van Hollen  
United States Senator



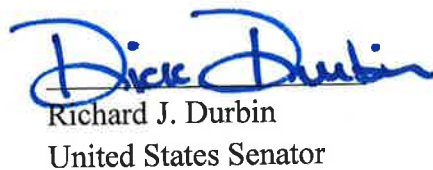
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Michael F. Bennet  
United States Senator



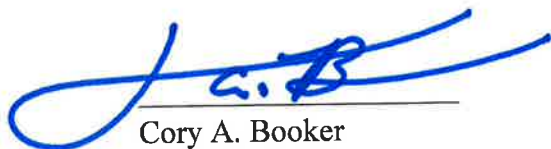
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Thomas R. Carper  
United States Senator



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Richard J. Durbin  
United States Senator



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Cory A. Booker  
United States Senator



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Tina Smith  
United States Senator



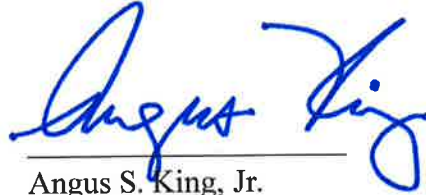
Maria Cantwell  
United States Senator



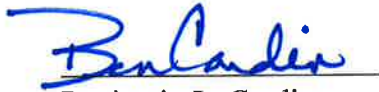
Patrick Leahy  
United States Senator



Kamala D. Harris  
United States Senator



Angus S. King, Jr.  
United States Senator



Benjamin L. Cardin  
United States Senator



Elizabeth Warren  
United States Senator



Margaret Wood Hassan  
United States Senator



Jacky Rosen  
United States Senator



Debbie Stabenow  
United States Senator



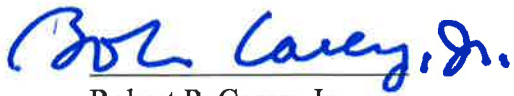
Tammy Duckworth  
United States Senator



Jeanne Shaheen  
United States Senator



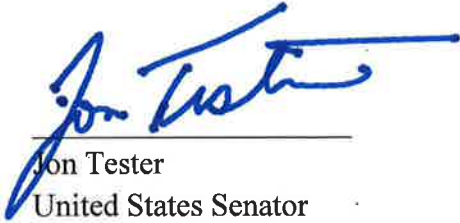
Richard Blumenthal  
United States Senator



Robert P. Casey, Jr.  
United States Senator



Christopher A. Coons  
United States Senator



Jon Tester  
United States Senator



Jack Reed  
United States Senator



Gary C. Peters  
United States Senator



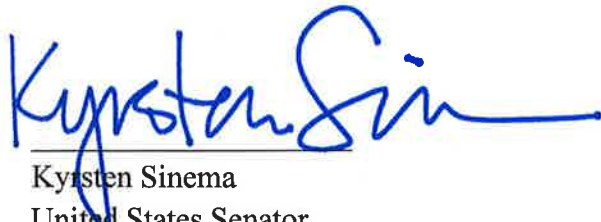
Tom Udall  
United States Senator



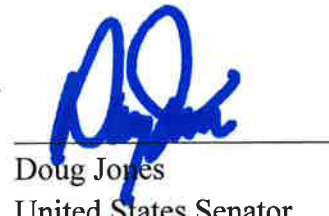
Mark R. Warner  
United States Senator



Martin Heinrich  
United States Senator



Kyrsten Sinema  
United States Senator



Doug Jones  
United States Senator



Joe Manchin III  
United States Senator