



HUMAN
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WATCH

“You Don’t Want Second Best”

Anti-LGBT Discrimination in US Health Care





“You Don’t Want Second Best”
Anti-LGBT Discrimination in US Health Care

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Summary

If you want the best surgeon, you want the best surgeon, you don't want the second best.

—Krista Contreras, reflecting on her six-day-old child being turned away by a pediatrician, Ferndale, MI, January 18, 2018

A substantial body of research indicates that lesbian, gay, bisexual, and transgender (LGBT) populations across the United States encounter significant barriers to health care. Many LGBT people have difficulty finding providers who are knowledgeable about their needs, encounter discrimination from insurers or providers, or delay or forego care because of concerns about how they will be treated. In the absence of federal legislation prohibiting healthcare discrimination based on sexual orientation and gender identity, LGBT people are often left with little recourse when discrimination occurs.

In May 2017, the US Department of Health and Human Services (HHS) signaled it would roll back regulations that prohibit discrimination against transgender people in federally funded healthcare programs. In April 2018, HHS submitted a draft of a proposed rule to this effect to the White House. At the same time, HHS has recently proposed regulations that would give providers wide latitude to discriminate or refuse to provide certain key services to LGBT people, women, and others by asserting a moral or religious objection. HHS has also created a new division within HHS's Office of Civil Rights to address claims brought by healthcare workers who raise objections to providing medical care to certain patients based on the provider's religious beliefs. Together, these developments threaten to exacerbate the barriers to care that LGBT people already encounter, and give insurers and providers who would deny services to LGBT people, women, and others a license to discriminate against them.

This report documents some of the barriers that LGBT people face in obtaining health care, and the toll that sweeping moral or religious exemptions can take on the health and well-being of those who are turned away by providers. It illustrates the scarcity of competent healthcare services for LGBT people in many states, the discrimination that LGBT people too often experience from providers, and the ways that negative experiences can deter LGBT people from seeking and obtaining the care they need.

The rollback of federal healthcare antidiscrimination protections and the expansion of religious exemptions for healthcare providers are each likely to impede LGBT people from obtaining healthcare services. Taken together, these moves will be devastating for many LGBT people, women, and others. Lawmakers at the federal, state, and local levels should enact laws and regulations that expressly prohibit discrimination based on sexual orientation and gender identity in health care, and should repeal or revise sweeping religious exemption laws that allow insurers and providers to deny healthcare services to LGBT people and women seeking reproductive care.

Methodology

Human Rights Watch conducted the research for this report between August 2017 and July 2018. To identify interviewees, a researcher conducted outreach through national and state LGBT groups, legal advocates, and service providers who circulated information about the project to their networks. The outreach for this report primarily focused on Mississippi and Tennessee, two of the states where statewide antidiscrimination protections do not prohibit discrimination based on sexual orientation and gender identity and where lawmakers have recently enacted exemptions permitting some providers to refuse service to LGBT people because of their religious or moral beliefs. A researcher conducted a total of 81 interviews specifically related to healthcare discrimination, including 33 with individuals who said they had been discriminated against in medical settings and 48 with advocates and providers working with affected individuals.

Most interviews were conducted in person from November 2017 to February 2018, with additional interviews conducted by telephone. No compensation was paid to interviewees. The researcher obtained verbal informed consent from interviewees, and notified interviewees why Human Rights Watch was conducting the research and how it would use their accounts, that they did not need to answer any questions, and that they could stop the interview at any time. Interviewees were given the option of using pseudonyms in published materials for the project; where pseudonyms are used in this report, that is reflected in the footnote citation.

I. Background

Under the Obama administration, US federal agencies issued a series of rules and regulations prohibiting discrimination based on sexual orientation and gender identity in federally funded programs. The Departments of Education, Justice, Housing and Urban Development, and Health and Human Services, among others, issued guidance or regulations clarifying that discrimination based on gender identity is impermissible as a form of sex discrimination under federal law.¹

Since 2017, the Trump administration has undercut or outright reversed many of these steps, rescinding guidance protecting transgender youth in schools,² delaying implementation of regulations protecting transgender people experiencing homelessness,³ and opposing inclusive interpretations of federal employment discrimination laws in court.⁴ Most recently, the administration has advanced two regulatory changes, discussed at length below, that would weaken antidiscrimination protections around federally funded healthcare activities and programs.

As this report describes, many LGBT people already face difficulties obtaining accessible, inclusive health care. The Trump administration's proposed rollback of antidiscrimination protections and expansion of religious exemptions are likely to have devastating consequences, exacerbating health disparities for a population that already experiences high rates of healthcare discrimination.

¹ White House, "Obama Administration's Record and the LGBT Community," June 9, 2016, <https://obamawhitehouse.archives.gov/the-press-office/2016/06/09/fact-sheet-obama-administrations-record-and-lgbt-community> (accessed June 1, 2018).

² Ryan Thoreson, "Trump Administration Withdraws Transgender Student Protections," Human Rights Watch, February 23, 2017, <https://www.hrw.org/news/2017/02/23/trump-administration-withdraws-transgender-student-protections> (accessed June 1, 2018).

³ Jennifer Hansler, "Carson Defends Delay in LGBT Homeless Protections," CNN, March 20, 2018, <https://www.cnn.com/2018/03/20/politics/ben-carson-lgbt-homeless-rights/index.html> (accessed June 1, 2018).

⁴ Ryan Thoreson, "US Justice Department Looks to Curtail LGBT Protections," Human Rights Watch, September 17, 2017, <https://www.hrw.org/news/2017/09/13/us-justice-department-looks-curtail-lgbt-protections> (accessed June 1, 2018); Ryan Thoreson; "US Justice Department Reverses Position on Transgender Discrimination," Human Rights Watch, October 5, 2017, <https://www.hrw.org/news/2017/10/05/us-justice-department-reverses-position-transgender-discrimination> (accessed June 1, 2018).

Discrimination by Healthcare Providers

A substantial body of social science and medical research has found that LGBT people are at heightened risk for physical and mental health problems.⁵ In 2016, a nationally representative survey to collect data on sexual orientation found LGB people were at heightened risk of psychological distress, drinking, and smoking, and lesbian and bisexual women were at heightened risk of having multiple chronic conditions.⁶ While data is less readily available for transgender individuals, state-level data has found that transgender people in the United States are more likely to be overweight, be depressed, report cognitive difficulties, and forego treatment for health problems than cisgender people.⁷

When LGBT people require care, they often face higher barriers to accessing it. LGBT individuals are twice as likely to be uninsured as non-LGBT individuals and many have difficulty finding providers who will treat them without passing judgment on their sexual orientation or gender identity or offer the services they need, particularly in rural areas. Some have difficulty finding providers who will treat them at all.⁸

The health issues that LGBT people experience are often exacerbated by the discrimination they face in society. Researchers have identified a range of harms related to “minority stress,” or the added stressors that individuals face because they belong to a stigmatized group. As one summary of this research notes: “Studies have concluded that minority stress processes are related to an array of mental health problems, including depressive symptoms, substance use, and suicide ideation and attempts.”⁹ Studies have found links between minority stress and physical health problems as well.¹⁰

⁵ See Centers for Disease Control and Prevention, “About LGBT Health,” March 24, 2017, <https://www.cdc.gov/lgbthealth/about.htm> (accessed June 1, 2018).

⁶ Gilbert Gonzales, Julia Przedworski & Carrie Henning-Smith, “Comparison of Health and Health Risk Factors Between Lesbian, Gay, and Bisexual Adults and Heterosexual Adults in the United States,” *JAMA Internal Medicine*, Vol. 176, No. 9 (2016), 1344-1351.

⁷ Carl G. Streed, Ellen McCarthy & Jennifer S. Haas, “Association Between Gender Minority Status and Self-Reported Physical and Mental Health in the United States,” *JAMA Internal Medicine*, Vol. 177, No. 8 (2017), 1210-1212.

⁸ Kellan Baker & Laura E. Durso, “Why Repealing the Affordable Care Act is Bad Medicine for LGBT Communities,” Center for American Progress, March 22, 2017, <https://www.americanprogress.org/issues/lgbt/news/2017/03/22/428970/repealing-affordable-care-act-bad-medicine-lgbt-communities> (accessed June 1, 2018).

⁹ Brief of Ilan H. Meyer, PhD., and Other Social Scientists and Legal Scholars Who Study the LGB Population as Amici Curiae Supporting Respondents, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, No. 16-111 (U.S. 2017), p. 21-22.

¹⁰ *Ibid.*, p. 23-24.

In one nationally representative survey from 2017, 68.5 percent of LGBT people who experienced discrimination in the past year said it negatively affected their psychological well-being, while 43.7 percent said it negatively affected their physical well-being.¹¹ Notably, levels of minority stress are partially influenced by the legal and social conditions under which individuals live, and “[r]esearch has shown that in US regions where LGB people have better social and legal conditions, they also have better health and lesser health disparities compared with heterosexuals.”¹² A recent study comparing mental distress in three states with religious refusal laws and six control states, for example, found that the passage of religious refusal laws was associated with a 46 percent increase in the proportion of LGBT residents reporting mental distress.¹³

LGBT people also have unique needs related to their sexual orientation and gender identity. Same-sex couples who decide to have children, for example, may seek out fertility specialists or utilize assisted reproductive technologies as part of the process. While not limited to LGBT people, gay and bisexual men and transgender women may be more in need of HIV-related health care, including treatment for those who are living with HIV and access to preventive care such as pre-exposure prophylaxis (PrEP), a daily pill that significantly lowers the risk of HIV infection. Transgender people who medically transition may seek access to puberty blockers, hormone replacement therapy (HRT), or gender-affirming surgeries as part of their transition.

Yet LGBT people—and particularly transgender people—continue to face high rates of discrimination in healthcare settings. In a nationally representative survey conducted by the Center for American Progress in 2017, 8 percent of lesbian, gay, and bisexual respondents and 29 percent of transgender respondents reported that a healthcare provider had refused to see them because of their sexual orientation or gender identity in

¹¹ Sejal Singh & Laura E. Durso, “Widespread Discrimination Continues to Shape LGBT People’s Lives in Both Subtle and Significant Ways,” *Center for American Progress*, May 2, 2017, <https://www.americanprogress.org/issues/lgbt/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways> (accessed June 15, 2018).

¹² Brief of Ilan H. Meyer, PhD., and Other Social Scientists and Legal Scholars Who Study the LGB Population as Amici Curiae Supporting Respondents, *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, No. 16-111 (U.S. 2017), p. 26.

¹³ Mary Elizabeth Dallas, “Religious Refusal Laws May Take Mental Health Toll on LGBT Americans,” *US News & World Report*, May 23, 2018, <https://health.usnews.com/health-care/articles/2018-05-23/religious-refusal-laws-may-take-mental-health-toll-on-lgbt-americans> (accessed June 15, 2018).

the past year.¹⁴ Over the same period, 9 percent of lesbian, gay, and bisexual respondents and 21 percent of transgender respondents said a provider had used harsh or abusive language when they sought medical care.¹⁵ A survey of almost 28,000 transgender people conducted by the National Center for Transgender Equality in 2015 found that 33 percent of respondents had experienced a negative interaction with a healthcare provider because of their gender identity in the year preceding the survey.¹⁶

Discrimination deters many LGBT people from seeking care. In the Center for American Progress survey, 8 percent of LGBT respondents had delayed or foregone medical care because of concerns of discrimination in healthcare settings—and those who had previously experienced discrimination were particularly likely to avoid seeking care.¹⁷ In the National Center for Transgender Equality survey, 23 percent of respondents did not seek care they needed because of concern about mistreatment based on gender identity.¹⁸

This data and interviews conducted by Human Rights Watch suggest that transgender and gender non-conforming people are at a particularly high risk of discrimination in health care. LGB interviewees most often encountered discrimination when they disclosed their sexual orientation or mentioned a same-sex partner, and occasionally described how they would not disclose these facts to providers to avoid discrimination. Nondisclosure was more difficult for many transgender interviewees, particularly when their medical records did not align with their gender identity, providers perceived them to be transgender, or they sought or were undertaking medical transition. While there are significant barriers to care for LGB people, especially in fertility and sexual health services, discrimination against transgender and gender non-conforming people is particularly acute.

¹⁴ Shabab Ahmed Mirza & Caitlin Rooney, “Discrimination Prevents LGBTQ People from Accessing Health Care,” Center for American Progress, January 18, 2018, <https://www.americanprogress.org/issues/lgbt/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care> (accessed June 1, 2018).

¹⁵ Ibid.

¹⁶ Sandy James et al., *Executive Summary of the Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Executive-Summary-Dec17.pdf> (accessed June 1, 2018).

¹⁷ Shabab Ahmed Mirza & Caitlin Rooney, “Discrimination Prevents LGBTQ People from Accessing Health Care,” Center for American Progress, January 18, 2018, <https://www.americanprogress.org/issues/lgbt/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care> (accessed June 1, 2018).

¹⁸ Sandy James et al., *Executive Summary of the Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Executive-Summary-Dec17.pdf> (accessed June 1, 2018).

Although this data suggests that discrimination can be detrimental to LGBT people’s health and well-being, protections against such discrimination remain uneven at both the federal and state levels.

Limited Antidiscrimination Protections

When LGBT people face discrimination in health care, the options for recourse are usually limited. As of this writing in June 2018, 37 states do not expressly prohibit health insurance discrimination based on sexual orientation and gender identity, and New Jersey prohibits discrimination based on gender identity alone.¹⁹ Only 19 states and the District of Columbia prohibit health insurers from excluding medical services for transgender people in insurance plans.²⁰ States offer varying degrees of protection in their Medicaid policies as well. In 18 states and the District of Columbia, the state policy expressly covers transition-related care for transgender people, while 22 states have no policy on transgender health coverage and 10 states expressly exclude that coverage.²¹

Recognizing the obstacles that LGBT people face, the Obama administration introduced rules that sought to curb discrimination in health care. Section 1557 of the Affordable Care Act, enacted in 2010, prohibits discrimination in health care based on race, color, national origin, sex, age, or disability.²² In 2016, the Department of Health and Human Services issued regulations implementing section 1557, which established that the prohibition of discrimination based on “sex” should be understood to include discrimination based on gender identity and pregnancy status.²³ The rule ensures that transgender people cannot be denied care—including transition-related care—because of their gender identity. It

¹⁹ Movement Advancement Project, “Healthcare Laws and Policies: Private Insurance,” http://www.lgbtmap.org/equality-maps/healthcare_laws_and_policies (accessed April 30, 2018).

²⁰ Ibid.

²¹ Movement Advancement Project, “Healthcare Laws and Policies: Medicaid,” http://www.lgbtmap.org/equality-maps/healthcare_laws_and_policies (accessed April 30, 2018). Litigants are challenging some of these restrictions. In June 2018, a court struck down Iowa’s ban on transition-related care under Medicaid. See Courtney Crowder, “A Judge Has Struck Down Iowa’s Medicaid Ban on Transgender Transition-Related Care. Here’s Why,” *Des Moines Register*, June 7, 2018, <https://www.desmoinesregister.com/story/news/investigations/2018/06/07/iowas-medicaid-ban-transgender-transition-care-struck-down/682175002> (accessed June 14, 2018). A similar challenge is pending in Wisconsin. Ivan Moreno, “Transgender Residents Sue Over Wisconsin Medicaid Rule,” *Chicago Tribune*, April 30, 2018, <http://www.chicagotribune.com/news/nationworld/midwest/ct-transgender-wisconsin-medicaid-20180430-story.html> (accessed June 14, 2018).

²² 42 U.S.C. § 18116 (incorporating the antidiscrimination grounds from the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and Section 794 of Title 29).

²³ “Nondiscrimination in Health Programs and Activities; Final Rule,” 45 CFR 92, Federal Register Vol. 81, No. 96, May 18, 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-05-18/pdf/2016-11458.pdf>.

clarifies that transgender people should be treated in accordance with their gender identity, and that insurance providers cannot presumptively deny coverage for transition-related care or refuse treatments to transgender people in a discriminatory manner. Shortly after the final rule was implemented, eight states and religious healthcare providers challenged it in court, and a federal judge in Texas enjoined the rule from taking effect.²⁴ As of June 2018, that stay remains in place.

Recent Setbacks for LGBT People’s Health and Rights

Instead of taking action to remedy the discrimination and healthcare disparities that LGBT people experience, the Trump administration has advanced two regulatory changes that are likely to exacerbate these problems.

First, in May 2017, the Department of Health and Human Services began the process of rolling back the rule clarifying section 1557. Rather than defending the rule in court, the Trump administration announced it planned to eliminate language clarifying that sex discrimination includes discrimination based on gender identity.²⁵ In April 2018, it notified the court that it had submitted a proposed rule to that effect to the White House for approval.²⁶ As of June 2018, six appellate courts had concluded in other contexts that discrimination based on gender identity is a form of discrimination based on sex,²⁷ and two appellate courts had reached a similar conclusion with regard to discrimination based on sexual orientation.²⁸ Nonetheless, rolling back the rule would have practical consequences, leaving transgender people less certain of their rights, providing little guidance to insurers or providers about their responsibilities under section 1557, and

²⁴ Order, *Franciscan Alliance v. Burwell*, No. 7:16-cv-00108 (N.D. Tex. December 31, 2016), <https://www.aclu.org/legal-document/franciscan-alliance-v-burwell-order-motions-preliminary-injunction> (accessed June 1, 2018).

²⁵ Defendants’ Motion for Voluntary Remand and Stay, *Franciscan Alliance, Inc. v. Price*, No. 7:16-cv-00108 (N.D. Tex., May 2, 2017), <https://transequality.org/sites/default/files/docs/releases/1557%20motion%20for%20remand.pdf> (accessed June 1, 2018).

²⁶ Robert Pear, “Trump Plan Would Cut Back Health Care Protections for Transgender People,” *New York Times*, April 21, 2018, <https://www.nytimes.com/2018/04/21/us/politics/trump-transgender-health-care.html> (accessed June 1, 2018).

²⁷ See, e.g., *Doe v. Boyertown Area School District*, 2018 WL 3016864 (3d Cir. June 18, 2018); *Whitaker v. Kenosha Unified School District*, 858 F.3d 1034 (7th Cir. May 30, 2017); *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir. Dec. 6, 2011); *Smith v. City of Salem*, 378 F.3d 566 (6th Cir. Aug. 5, 2004); *Rosa v. Park West Bank & Trust Co.*, 214 F.3d 213 (1st Cir. June 8, 2000); *Schwenk v. Hartford*, 204 F.3d 1187 (9th Cir. Feb. 29, 2000).

²⁸ See, e.g., *Zarda v. Altitude Express*, No. 15-3775 (2nd Cir. February 26, 2018); *Hively v. Ivy Tech Community College*, No. 15-1720 (7th Cir. April 4, 2017).

signaling that federal agencies will not advance trans-inclusive interpretations of section 1557 in their rulemaking and enforcement capacities.

Second, in early 2018, the Department of Health and Human Services issued a proposed rule that would give sweeping discretion to insurers and providers to decline to serve patients based on their moral or religious beliefs.²⁹ The regulation would broaden existing religious exemptions by codifying definitions so vague and open-ended that they could easily be invoked as a pretext to justify discrimination against LGBT people, women, and others.³⁰ While the bulk of the proposed rule focuses on providers, it includes language that purports to allow insurers to opt out of covering services they are otherwise required to cover under state or federal law. These redefinitions risk greatly exacerbating the healthcare discrimination and barriers that LGBT people, women, and others already experience. Among the definitions that give cause for concern are the following:

- The proposed rule broadens the definition of the term “health care entity” with an illustrative, non-exhaustive list of providers, institutions, and insurers, leaving little clarity about who can claim exemptions under the proposed rule and providing little guidance for providers and patients alike.³¹
- The proposed rule broadens what it means to “assist in the performance of” a healthcare service, permitting anyone with an “articulable connection” to the healthcare service they consider objectionable—instead of a “direct connection”—to decline to participate. The expanded definition would allow people with only a tangential connection to the provision of healthcare services, including administrative or technical personnel, to refuse to perform a task because they can identify some connection, no matter how attenuated, to a service they consider objectionable.³² For example, a hospital room scheduler might well be able to refuse to book a room, or a technician refuse to clean surgical instruments, for procedures they consider objectionable.

²⁹ “Protecting Statutory Conscience Rights in Health Care; Delegations of Authority,” 45 CFR 88, Federal Register Vol. 83, No. 18, January 26, 2018, <https://www.gpo.gov/fdsys/pkg/FR-2018-01-26/pdf/2018-01226.pdf> (accessed June 1, 2018).

³⁰ Human Rights Watch, “Human Rights Watch Letter to US Secretary of Health and Human Services Alex Azar,” March 27, 2018, <https://www.hrw.org/news/2018/03/27/human-rights-watch-letter-us-secretary-health-and-human-services-alex-azar> (accessed June 1, 2018).

³¹ “Protecting Statutory Conscience Rights in Health Care; Delegations of Authority,” 45 CFR 88, Federal Register Vol. 83, No. 18, January 26, 2018, p. 3893, <https://www.gpo.gov/fdsys/pkg/FR-2018-01-26/pdf/2018-01226.pdf> (accessed June 1, 2018).

³² *Ibid.*, p. 3892.

- The proposed rule allows exemptions from a broad range of referral requirements, defining “referral” or “refer for” to include the provision of basic information about a healthcare service, activity, or procedure.³³

The decisions to roll back the rule protecting transgender people and to expand protections for those who refuse to provide healthcare services based on religious beliefs strengthen the ability of insurers and providers to refuse care to LGBT people, and particularly transgender people. They also have the practical effect of pulling the government’s focus away from a serious problem while greatly elevating the importance of a relatively minor one. Between the fall of 2016 and the fall of 2017, the Office of Civil Rights (OCR) received more than 30,000 complaints alleging civil rights or privacy violations in healthcare settings. In a roughly similar period, OCR received just 34 complaints alleging violations of existing federal laws that permit religious refusals.³⁴

In addition to these federal developments, three US states have enacted laws or regulations that give wider latitude to discriminate in the provision of healthcare services.

- Illinois’s Health Care Right of Conscience Act, amended in 2016, provides that no person, institution, or official can discriminate against any person based on a “conscientious refusal to receive, obtain, accept, perform, assist, counsel, suggest, recommend, refer or participate in any way in any particular form of health care services contrary to his or her conscience.”³⁵ The law requires facilities to develop written protocols that outline how objections will be addressed, and to have a non-objecting provider at the facility provide the service, refer the patient, or notify the patient about other providers.³⁶ While the latter provisions attempt to ameliorate the adverse effects that a refusal might have on an individual’s health or rights, the referral requirement was temporarily enjoined by a federal court in 2017 and

³³ Ibid.

³⁴ US Department of Health and Human Services, “FY 2019 Budget in Brief,” February 19, 2018, p. 124, <https://www.hhs.gov/sites/default/files/fy-2019-budget-in-brief.pdf> (accessed June 1, 2018).

³⁵ 745 Ill. Comp. Stat. Ann. 70/5.

³⁶ 745 Ill. Comp. Stat. Ann. 70/6.1.

opponents have filed a complaint with HHS challenging the referral and information provisions.³⁷

- A Tennessee law enacted in 2016 states that “[n]o counselor or therapist providing counseling or therapy services shall be required to counsel or serve a client as to goals, outcomes, or behaviors that conflict with a sincerely held religious belief of the counselor or therapist.”³⁸ The law states that providers who refuse services should coordinate a referral to another provider who will see the client.³⁹
- A Mississippi law enacted in 2016 explicitly allows certain kinds of discrimination by those who believe that “marriage is or should be recognized as the union of one man and one woman; sexual relations are properly reserved to such a marriage; and male (man) or female (woman) refer to an individual’s immutable biological sex as objectively determined by anatomy and genetics at time of birth.”⁴⁰ In health care, this means that the state may not take action against a provider who declines to provide “treatments, counseling, or surgeries related to sex reassignment or gender identity transitioning or declines to participate in the provision of psychological, counseling, or fertility services based upon a sincerely held religious belief or moral conviction.”⁴¹

As the research in this report illustrates, many LGBT people in the United States face significant obstacles when seeking healthcare services. Retreating from antidiscrimination protections while expanding exemptions that permit insurers and providers to deny care based on their moral or religious convictions is a dangerous combination.

³⁷ See *NIFLA, et al., v. Rauner, et al.*, 16 C 51030, (N.D. Ill., July 19, 2017); Thomas More Society, “Violations of Federal Law arising from Illinois Public Act 99-690,” January 4, 2018, <https://www.thomasmoresociety.org/wp-content/uploads/2018/01/180104-HHS-OCR-Complaint-Letter-with-Exhibits.pdf> (accessed June 1, 2018).

³⁸ Tennessee Senate Bill 1556, 2016, sec. 1(a), <https://legiscan.com/TN/text/SB1556/id/1319613/Tennessee-2015-SB1556-Draft.pdf> (accessed June 1, 2018).

³⁹ *Ibid.*, <https://legiscan.com/TN/text/SB1556/id/1319613/Tennessee-2015-SB1556-Draft.pdf> (accessed June 1, 2018).

⁴⁰ Mississippi House Bill 1523, 2016, sec. 2, <http://billstatus.ls.state.ms.us/documents/2016/html/HB/1500-1599/HB1523SG.htm> (accessed June 1, 2018).

⁴¹ *Ibid.*, sec. 3(4), <http://billstatus.ls.state.ms.us/documents/2016/html/HB/1500-1599/HB1523SG.htm> (accessed June 1, 2018).

II. Anti-LGBT Discrimination in Health Care

The withdrawal of antidiscrimination protections and expansion of religious exemptions is occurring in a climate in which LGBT people already face significant barriers to accessible and inclusive health care. LGBT people in states that enacted exemptions described four major obstacles, independent of the proposed federal changes, to obtaining the care they need: lack of accessible services, discrimination by insurers and providers, refusals by providers, and reluctance to seek care. As discussed in this section, each of these obstacles is exacerbated where legal protections against discrimination are absent or unclear and where the expansion of religious exemptions allows providers to refuse care.

Lack of Accessible Services

Even before approaching healthcare providers, LGBT people can encounter difficulty finding the specific services they need. If they experience discrimination, they may not have alternative providers available. Data collected by the Center for American Progress indicate that 18 percent of LGBT people believe that if they were refused care at a hospital, it would be “very difficult” or “not possible” to find an alternative provider.⁴² Outside of major metropolitan areas, that number rose to 41 percent.⁴³ Transgender people were particularly likely to say that alternatives would be unavailable or inaccessible if they were turned away from a hospital, community health center, or pharmacy in their area.⁴⁴

In part, this is because there may be few providers who are known to provide care to LGBT individuals without passing judgment on their sexual orientation or gender identity or are equipped to provide certain types of care, especially in more rural areas. The creation of LGBT competency modules in physician training programs is a relatively recent development; a survey of US medical schools conducted in 2012 found that only 16 percent of respondent institutions had comprehensive LGBT-competency training, and 52

⁴² Shabab Ahmed Mirza & Caitlin Rooney, “Discrimination Prevents LGBTQ People from Accessing Health Care,” Center for American Progress, January 18, 2018, <https://www.americanprogress.org/issues/lgbt/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care> (accessed June 1, 2018).

⁴³ Ibid.

⁴⁴ Ibid.

percent had no LGBT-competency training at all.⁴⁵ Where it is offered, training on LGBT issues may be elective, or may only constitute a small portion of a larger course on serving diverse or multicultural populations.⁴⁶

Even where there are multiple providers in an area, material and logistical barriers may prevent LGBT people from being able to access them. When providers are not trained on LGBT issues or services are scarce in an area, LGBT people may have few options when a provider discriminates against them or turns them away.

Scarcity of Providers

Most interviewees told Human Rights Watch that they had little or no access to LGBT-friendly healthcare providers in their area. As the head of one community center in rural Michigan said, “I do not know of any trans-affirming healthcare providers in the area. And I’ve talked to many trans people in the area.”⁴⁷ One pediatrician in Alabama remarked that religious refusals are “dangerous in a predominantly rural state, [where] health disparities are massive to begin with. Huge, huge, huge swathes of our state not only have no pediatricians, but have as few as two or three physicians per county.”⁴⁸ Interviewees described LGBT individuals driving two hours from Tennessee to attend a weekend support group for gender-expansive youth in Birmingham,⁴⁹ traveling two hours from Arkansas or Mississippi to attend therapy or meet with a trans-affirming doctor in Memphis,⁵⁰ driving across Michigan to find a friendly nurse practitioner or medical practice,⁵¹ or driving from East Tennessee to North Carolina for regular hormone injections.⁵²

The lack of providers was especially acute in rural areas, but certain services were difficult to find in metropolitan areas as well. As one mother of a transgender child noted:

⁴⁵ Joshua Khalili, Lucinda Leung & Allison Diamant, “Finding the Perfect Doctor: Identifying Lesbian, Gay, Bisexual, and Transgender-Competent Physicians,” *American Journal of Public Health*, Vol. 105, No. 6 (2015), 1114-1119.

⁴⁶ Human Rights Watch interview with Joe Miles, University of Tennessee, Knoxville, TN, December 8, 2017.

⁴⁷ Human Rights Watch interview with Mary Jo Schnell, OutCenter, Benton Harbor, MI, January 17, 2018.

⁴⁸ Human Rights Watch telephone interview with Paula R. (pseudonym), September 7, 2017.

⁴⁹ The term “gender expansive” describes expressions or behaviors that are broader than culturally dominant understandings of gender. Human Rights Watch telephone interview with Paula R. (pseudonym), September 7, 2017.

⁵⁰ Human Rights Watch interview with KT Hiestand, Memphis, TN, January 12, 2018; Human Rights Watch interview with Gail Stratton, Oxford, MS, January 13, 2017.

⁵¹ Human Rights Watch interview with Nicole H., Lansing, MI, January 17, 2018; Human Rights Watch interview with Genny Maze, Equality Michigan, Detroit, MI, January 16, 2018.

⁵² Human Rights Watch interview with Judith N. (pseudonym), Johnson City, TN, December 10, 2017.

In Knoxville, we have a lot of hospitals, a lot of doctor's offices, but even with all of that, finding hormone therapy is very difficult. So difficult. Gynecologists don't do hormones, GPs don't do hormones, you have to see an endocrinologist. And that can be cost prohibitive, or maybe you don't find one you like.... It's hard to find medical care for trans people even in a city around here—and that's just for hormones. Finding a GP where you can go in the office that you're comfortable in, where the doctor is good, the office is good—that's hard for anyone, even if you're not trans. But having them treat you like a normal human being when you're trans is even more difficult. If you're in a rural area, you're up a creek.⁵³

While some of the scarce services were related to sexual orientation or gender identity, others were general medical services that providers denied to LGBT people. Interviewees described how one transgender man in East Tennessee had to travel three hours to obtain a hysterectomy,⁵⁴ and others noted that breast surgeries that were available to cisgender individuals were not similarly available to transgender individuals.⁵⁵ One sexual and reproductive health services provider observed: “I think there's four hormone therapy providers [in our area]... Our provider who does HRT services is like, it's no different from menopause services.”⁵⁶

Many interviewees told Human Rights Watch that some services were available only from a small number of providers. A survey by the National Center for Transgender Equality found that 29 percent of transgender people who are able to access transition-related care have to travel more than 25 miles to obtain it.⁵⁷

Several providers and LGBT individuals noted that they knew of very few providers in their areas who would prescribe PrEP, a medication that significantly lowers the risk of HIV

⁵³ Human Rights Watch telephone interview with Sarah H. (pseudonym), Knoxville, TN, October 20, 2017.

⁵⁴ Human Rights Watch interview with Sam P. (pseudonym), Johnson City, TN, December 10, 2017.

⁵⁵ Human Rights Watch interview with Holly Calvasina, Choices, Memphis, TN, January 10, 2018; Human Rights Watch interview with Kayla Gore, OutMemphis, Memphis, TN, January 10, 2018; Human Rights Watch interview with Renae T., Memphis, TN, January 12, 2018.

⁵⁶ Human Rights Watch interview with Holly Calvasina, Choices, Memphis, TN, January 10, 2018.

⁵⁷ Sandy James et al., *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality (2016), p. 103, <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf> (accessed June 1, 2018).

infection by preventing HIV from taking hold in the body.⁵⁸ As one psychologist in Knoxville, Tennessee, noted, “there are only two providers who’ll prescribe it—in a community this large. And the doctor we like, we overload him—we’re like, you have one option, and if you don’t have insurance, you’re pooched, because he’s expensive.”⁵⁹ A service provider in Memphis, Tennessee, similarly said that, in a city of a million people, the hospital they worked with was aware of three doctors who would handle PrEP referrals.⁶⁰

Other interviewees identified a limited number of fertility and reproductive health providers who worked with same-sex couples. A lesbian woman in Mississippi recalled that, when she and her wife sought a fertility doctor in 2012, they were unable to find options in their area and contacted a clinic in Alabama. When that clinic informed the couple that they only treated heterosexual, married couples, they did not find an LGBT-friendly provider for a year.⁶¹

As discussed below, many LGBT organizations and community groups developed lists of providers who were known to be open to LGBT clients. As one trans activist noted, “Our list of mental health care providers that we pass around is really small. It’s—the ones who will actually answer the phone and schedule an appointment are probably three or four. And these are the ones who have been somewhat vetted as being LGBT friendly. And a lot of those, the T is silent, most of the time.”⁶²

In some instances, services existed but were not advertised to the community. One doctor in a rural state noted that her hospital had extensive services for transgender youth, but they were not allowed to market or advertise those services because administrators were concerned about repercussions from the state legislature.⁶³ The mother of a transgender child who had struggled to find a pediatric endocrinologist said, “the ones in this area,

⁵⁸ Human Rights Watch interview with Shane Bierma, Knoxville, TN, December 9, 2017; Human Rights Watch interview with Peder Brue, Family Safety Center, Memphis, TN, January 10, 2018; Human Rights Watch interview with Holly Calvasina, Choices, Memphis, TN, January 10, 2018; Human Rights Watch interview with Diane Duke, Friends for Life, Memphis, TN, January 10, 2018; Human Rights Watch interview with Kathy Garner, Hattiesburg, MS, November 27, 2017; Human Rights Watch telephone interview with Mike Ziri, Equality Illinois, September 7, 2017.

⁵⁹ Human Rights Watch interview with Shane Bierma, Knoxville, TN, December 9, 2017.

⁶⁰ Human Rights Watch interview with Peder Brue, Family Safety Center, Memphis, TN, January 10, 2018.

⁶¹ Human Rights Watch interview with Leiana C., Biloxi, MS, November 26, 2017.

⁶² Human Rights Watch interview with Persephone Webb, Knoxville, TN, December 8, 2017.

⁶³ Human Rights Watch telephone interview with Paula R. (pseudonym), September 7, 2017.

they've told us they're not certain about displaying something saying they're LGBT friendly, out of fear of how people would react.”⁶⁴

When a limited number of providers were known to the community to be competent and welcoming, they could be overwhelmed with demand.⁶⁵ As Judith N., a transgender woman in East Tennessee, described it, “I spent years looking for access to therapy and hormones and I just couldn't find it. We end up recommending the same places over and over, and that has to mean people aren't getting in.”⁶⁶

Barriers to Access

For many LGBT people, unemployment and poverty combine with other barriers to care to make particular types of care virtually unattainable. A study examining data collected from 2010 to 2014 found that households headed by same-sex couples are more likely than those headed by demographically similar heterosexual couples to live in poverty.⁶⁷ Data from the 2015 U.S. Transgender Survey indicated that 15 percent of transgender respondents were unemployed and 29 percent were living in poverty.⁶⁸ Without employment, individuals may have a more difficult time maintaining insurance and affording health care. In early 2017, an estimated 25 percent of transgender individuals were uninsured.⁶⁹ In the 2015 U.S. Transgender Survey, a third of the transgender respondents indicated that they had foregone medical care they needed in the past year because of concerns about cost.⁷⁰

⁶⁴ Human Rights Watch interview with Carla B. (pseudonym), Knoxville, TN, December 9, 2017.

⁶⁵ Human Rights Watch interview with Sam P. (pseudonym), Johnson City, TN, December 10, 2017; Human Rights Watch interview with Renae T., Memphis, TN, January 12, 2018.

⁶⁶ Human Rights Watch interview with Judith N. (pseudonym), Johnson City, TN, December 10, 2017.

⁶⁷ Alyssa Schneebaum & M.V. Lee Badgett, “Poverty in US Lesbian and Gay Couple Households,” *Feminist Economics* (2018), <https://doi.org/10.1080/13545701.2018.1441533> (accessed June 28, 2018).

⁶⁸ Sandy James et al., *Executive Summary of the Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality (2016), p. 3, <https://transequality.org/sites/default/files/docs/usts/USTS-Executive-Summary-Dec17.pdf> (accessed June 1, 2018). Comparable rates for the general population of the United States were 5 percent and 12 percent, respectively. *Ibid.*

⁶⁹ Kellan Baker & Laura E. Durso, “Why Repealing the Affordable Care Act is Bad Medicine for LGBT Communities,” Center for American Progress, March 22, 2017, <https://www.americanprogress.org/issues/lgbt/news/2017/03/22/428970/repealing-affordable-care-act-bad-medicine-lgbt-communities> (accessed June 1, 2018).

⁷⁰ Sandy James et al., *The Report of the 2015 U.S. Transgender Survey*, National Center for Transgender Equality (2016), p. 98, <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf> (accessed June 1, 2018).

Interviewees described how cost and distance made certain services unattainable. Sandra R., a transgender woman in Flint, Michigan, described the difficulty of finding providers who would assist with a surgical transition. The nearest in-state surgeon she could find who would do the procedure was located in Ann Arbor, an hour away, which was prohibitively difficult because she did not have her own transportation. She was told that to obtain surgery from that provider, she would have to undergo electrolysis. The only transgender-friendly electrolysis providers she could find were in Lansing and Ann Arbor, and she could not determine if they would take her insurance or if it was a covered procedure. Although she was able to find a surgeon in Pennsylvania who did not require electrolysis, her insurance would not cover out-of-state procedures, and she had thus far been unable to navigate her insurance to determine how she could proceed.⁷¹

Patrick Grzanka, a professor of psychology at the University of Tennessee who is documenting the effects of Tennessee’s law permitting counselors to discriminate based on their religious beliefs, said that religious exemption laws exacerbate scarcity and barriers to access: “And therapists, counselors, and psychotherapists, it’s not like every town has one, like a fire station. People might be 40 miles, 50 miles, from the nearest therapist who takes their health insurance.... There are so many reasons people don’t seek therapy—cost, people don’t know how to get it, the stigma—and to put up another obstacle is that much worse.”⁷² Elliott Devore, a graduate student working on the project, echoed this assessment: “The qualitative interviews we’re wrapping up are pretty heartwrenching. People will say in my small town there’s one person or two, and I don’t have an hour or hour and a half to drive to Nashville to find an affirming therapist.”⁷³ In situations like these, a provider’s unwillingness to see an LGBT person can mean the difference between obtaining needed health care and not obtaining it at all.

Discrimination and Mistreatment

When LGBT people did access healthcare services, many encountered discriminatory language or treatment related to their sexual orientation or gender identity. As noted

⁷¹ Human Rights Watch interview with Sandra R. (pseudonym), Flint, MI, January 19, 2018. Advocates similarly noted that the electrolysis requirement could be prohibitively costly and time-consuming for those seeking to surgically transition. Human Rights Watch interview with Lilianna Reyes, Affirmations, Detroit, MI, January 19, 2018.

⁷² Human Rights Watch telephone interview with Patrick Grzanka, University of Tennessee, Knoxville, TN, September 11, 2017.

⁷³ Human Rights Watch interview with Elliott Devore, University of Tennessee, Knoxville, TN, December 8, 2017.

above, a nationally representative survey released in January 2017 found that 9 percent of lesbian, gay, and bisexual respondents and 21 percent of transgender respondents had experienced harsh or abusive language from a medical provider in the previous year.⁷⁴

Multiple interviewees noted that they not only encountered discrimination from their medical provider, but from administrative staff. Jeynce Poindexter, a victim’s advocate at Equality Michigan, observed that: “The initial interaction in the emergency room, where you have to give your ID, info, insurance, that’s mainly where the complaints come from—it’s not the doctors so much. It’s the initial intake. There’s lots of misgendering, harmful terminology, intentional disrespect.”⁷⁵

Beyond the intake, some interviewees faced humiliation or discrimination from providers themselves. Renae T., a transgender woman in Memphis, Tennessee, recalled an incident where a nurse was treating her for cardiomyopathy, left the room, and audibly told another nurse to come look at her breasts.⁷⁶ Judith N., a transgender woman in East Tennessee, described a pre-employment medical examination where a doctor ended the appointment without giving her the exam as soon as he saw she had shaved her legs.⁷⁷ Karen W., a transgender woman in Biloxi, Mississippi, recounted that she had been admitted and then ignored when seeking care at the emergency room at a local hospital; about a year later, a transgender male friend had a similar experience at the same hospital.⁷⁸

Although many interviewees described negative experiences in hospitals, discrimination occurs in counseling and therapy as well, as described elsewhere in this report. KT Hiestand, a therapist in Memphis, observed:

There have been a few folks who found a therapist who started seeing them and the therapist tried to cure them, make them not trans. I’ve had two lesbian clients I can think of who were working with another therapist, they

⁷⁴ Shabab Ahmed Mirza & Caitlin Rooney, “Discrimination Prevents LGBTQ People from Accessing Health Care,” Center for American Progress, January 18, 2018, <https://www.americanprogress.org/issues/lgbt/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care> (accessed June 1, 2018).

⁷⁵ Human Rights Watch interview with Jeynce Poindexter, Equality Michigan, Detroit, MI, January 16, 2018.

⁷⁶ Human Rights Watch interview with Renae T., Memphis, TN, January 12, 2018.

⁷⁷ Human Rights Watch interview with Judith N. (pseudonym), Johnson City, TN, December 10, 2017.

⁷⁸ Human Rights Watch telephone interview with Karen W. (pseudonym), Biloxi, MS, October 4, 2017.

were having relationship difficulties, the therapist’s solution was oh, you just need to date men. Quite frankly, I’ve been shocked. I know there are therapists who are not open and accepting. I get that. I assumed that would be the exception, but it often feels like it’s more the rule.⁷⁹

These discriminatory incidents can deter LGBT people from returning for medical care. As Carla B., the mother of a transgender teenager, said: “I said these are his name and his pronouns and he was sitting there, and the doctor uses his birth name and pronouns.... After the doctor left, [my son] cried for a solid ten minutes, and said I don’t want to come back here ever again.”⁸⁰ Socorro Sevilla, a clinical social worker in rural Michigan, observed: “I’ve gotten quite a few people who have gone through several providers—they’ve had to drive to Ann Arbor, which is an hour away, and some have gone to providers who they felt said things that were inappropriate or who weren’t supportive or just seemed blatantly anti-LGBTQ to them.”⁸¹

In many instances, this discriminatory treatment was overtly moralistic. Trevor L., a gay man in Memphis, recalled an incident in 2016: “I had one experience down here where I had a doctor, and I said I want to get an HIV test done, get my annuals done, and they sat down and started preaching to me—not biblical things, but saying, you know this is not appropriate, I can help you with counseling, and I was like, oh, thank you, I’ve been out for 20 years and I think I’m okay. It’s almost like they feel they have the right to tell you that it’s wrong.”⁸²

Kayla Gore at OutMemphis, an LGBT center in Memphis, noted the organization had fielded similar complaints: “As far as PrEP goes, we’ve had doctors pray for trans clients, pray for their redemption, pray that their lifestyle doesn’t lead them down the road to HIV, and they deny them access to PrEP.”⁸³ Holly Calvasina, who works at a center for reproductive health in Memphis, said that “in terms of accessing HRT, PrEP and PEP [post-exposure prophylaxis], we absolutely see patients who come to us who have gone to other organizations in town and had situations where their navigator will say, ‘this is Mary, she’s

⁷⁹ Human Rights Watch interview with KT Hiestand, Memphis, TN, January 12, 2018.

⁸⁰ Human Rights Watch interview with Carla B. (pseudonym), Knoxville, TN, December 9, 2017.

⁸¹ Human Rights Watch interview with Socorro Sevilla, Adrian, MI, January 16, 2018.

⁸² Human Rights Watch interview with Trevor L. (pseudonym), Memphis, TN, January 10, 2018.

⁸³ Human Rights Watch interview with Kayla Gore, OutMemphis, Memphis, TN, January 10, 2018.

here for PrEP,’ and they’ll say ‘welcome, Duane, please come back.’ Or before they give the prescription, they say, ‘can I pray for you?’ So even though technically the services are available and there’s state funding to pay for them, I’d consider them functionally inaccessible. I’m a white lesbian who lives in the suburbs, and I wouldn’t go there.”⁸⁴

This kind of overt discrimination can be especially damaging to those seeking mental health care. Shane Bierma, who provides psychological services at Positively Living in Knoxville, underscored the tenor of the discrimination that many LGBT people encounter from mental health professionals:

It is not uncommon for many of my clients to have been sent to conversion therapy at some point in their development. It is not uncommon for my clients to have had some other type of religious intervention in their sexuality. I’ve had numerous clients who are HIV positive tell me of having at least one if not several medical providers tell them that they have HIV because God hates them because they’re gay. I have had ambiguous refusals where it was likely that I didn’t have good information because I saw folks when they were in crisis, but lots of judgment or refusal of services in rural communities, or the utter and complete fear to even try. Probably some of the best things that happen are people end up in psychiatric crisis in rural communities and they end up in Knoxville and are able to get actual services here, and realize there’s a world outside their rural community where they can get help.⁸⁵

In a context where discrimination is common, the federal government’s decision to roll back language that clearly prohibits discrimination and expand religious exemptions sends a dangerous signal, one that opens the door to mistreatment. As Gore observed, “We’re in the Bible Belt, so a lot of our discrimination is deeply rooted in people’s religious beliefs. They don’t always say it, but that’s the actual case. It’s religiously based.”⁸⁶ As religious exemptions expand to encompass a wider range of staff members and forms of objections, these service refusals are likely to become more commonplace and overt.

⁸⁴ Human Rights Watch interview with Holly Calvasina, Choices, Memphis, TN, January 10, 2018.

⁸⁵ Human Rights Watch interview with Shane Bierma, Knoxville, TN, December 9, 2017.

⁸⁶ Human Rights Watch interview with Kayla Gore, OutMemphis, Memphis, TN, January 10, 2018.

Refusals of Service

As Human Rights Watch has previously documented, LGBT people face service refusals across the healthcare field.⁸⁷ LGBT people have been denied fertility treatments,⁸⁸ turned away from counseling sessions,⁸⁹ denied a checkup because they are gay,⁹⁰ refused basic health care because they are transgender,⁹¹ and in one instance, told that a pediatrician's religious beliefs precluded her from evaluating a same-sex couple's six-day-old child.⁹²

In recent interviews, mental health professionals in Tennessee said they continue to see new clients who have been turned away by other providers. Jessica Shea, a clinical social worker in Memphis, described how one transgender child was turned away from a religiously affiliated psychiatric practice:

They accepted the person at first, but when they found out it was a trans client, the doctor said we don't see trans clients here. They got in the door, but then got turned away. It often takes months to get an appointment here, and the family felt they had invested a lot of time to get in, and was then turned away. It was the doctor there.... once he found out the child was a trans child he said they would not be able to accommodate them for the psych evaluation. The family was told they don't provide services to trans clients.⁹³

KT Hiestand, a psychologist in Memphis, underscored that these are not isolated incidents:

I mean, you don't know how many clients I get who call seeking information and when I call them back and say of course I can work with you on these

⁸⁷ Human Rights Watch, *"All We Want is Equality": Religious Exemptions and Discrimination against LGBT People in the United States*, (New York: Human Rights Watch: 2018)

https://www.hrw.org/sites/default/files/report_pdf/lgbto218_web_1.pdf.

⁸⁸ Human Rights Watch interview with Leiana C., Gulfport, MS, November 26, 2017.

⁸⁹ Human Rights Watch interview with Elliott Devore, University of Tennessee, Knoxville, TN, December 8, 2017.

⁹⁰ Human Rights Watch telephone interview with Paula R. (pseudonym), September 7, 2017.

⁹¹ Human Rights Watch telephone interview with Petra E., Biloxi, MS, October 4, 2017.

⁹² Human Rights Watch interview with Jami Contreras, Ferndale, MI, January 18, 2018.

⁹³ Human Rights Watch interview with Jessica Shea, Memphis, TN, January 11, 2018.

issues, they tell me how many therapists didn't call them back or just refused. It's 2018. I kind of figured we'd be beyond this.⁹⁴

Refusals occur in other aspects of health care as well. Larry Frampton of Nashville CARES, an HIV/AIDS organization, said: "One of the biggest areas where we've seen a problem with that is primary care physicians providing PrEP. A lot of them have a moral issue with it, and we get calls from all over the state saying my primary care provider won't provide PrEP, what do I do, and we've had to look up who we can point them to in their area. We've had a lot of calls about that. Probably over a hundred."⁹⁵

Holly Calvasina recounted the story of a transgender colleague in Memphis who "had a yeast infection, and 5 to 6 doctor's offices told her we don't treat trans patients. But a prescription for Diflucan isn't gendered! Unless you're talking about HRT or surgery, health care isn't different for trans people. It's a body that needs care."⁹⁶

Practitioners who have witnessed the effects of healthcare refusals stressed that these are not without consequence. As Hiestand said: "Being simply turned away from counseling when you're hurting and you need help is absolutely detrimental—it makes it less likely that the person will continue to seek help."⁹⁷ While mental health practitioners may elect to make a referral when they lack expertise or competency in an area, many professional ethics codes dictate that they do so only if the person is stable and they can refer them to someone who is better equipped to help them.⁹⁸ Hiestand noted that she saw clients who had been turned away from other counseling practices without receiving referrals.⁹⁹

Activists have observed wider social effects of religious refusal laws. Interviewees expressed concern that people did not understand the scope of the laws and assumed they permitted a much wider range of religious refusals.¹⁰⁰

⁹⁴ Human Rights Watch interview with KT Hiestand, Memphis, TN, January 12, 2018.

⁹⁵ Human Rights Watch interview with Larry Frampton, Nashville CARES, Nashville, TN, December 6, 2017.

⁹⁶ Human Rights Watch interview with Holly Calvasina, Choices, Memphis, TN, January 10, 2018.

⁹⁷ Human Rights Watch interview with KT Hiestand, Memphis, TN, January 12, 2018.

⁹⁸ See American Medical Association, Code of Medical Ethics Opinion 1.1.7, <https://www.ama-assn.org/delivering-care/physician-exercise-conscience> (accessed June 7, 2018); American Counseling Association, Code of Ethics, A.11, <https://www.counseling.org/resources/aca-code-of-ethics.pdf> (accessed June 7, 2018).

⁹⁹ Human Rights Watch interview with KT Hiestand, Memphis, TN, January 12, 2018.

¹⁰⁰ Human Rights Watch telephone interview with Lisa Scheps, Transgender Education Network of Texas, Austin, TX, October 4, 2017.

The aggressive expansion of sweeping moral and religious exemptions sends a strong signal to insurers and providers who would discriminate against LGBT people, women, and others based on their beliefs. With the proposed rule from HHS and sweeping exemptions in Illinois and Mississippi, federal and state agencies have invited a much wider range of religious refusals. As Susan Berke Fogel of the National Health Law Program noted, “what we have now is an administration who is very intentionally expanding what religious exemptions look like.”¹⁰¹

Reluctance to Seek Care

In addition to the discrimination they engender, the mere existence of sweeping exemption laws can deter individuals from seeking and obtaining care they need. This is particularly acute for LGBT people who have suffered discrimination firsthand. A nationally representative survey conducted by the Center for American Progress in January 2017 found that LGBT people who had experienced discrimination in the past year were six times more likely than those who had not experienced discrimination to avoid going to a doctor’s office.¹⁰²

In the absence of clear definitions and guidelines, people may not know who can and cannot turn them away, and what protections they might have. Leticia Flores, a professor of psychology at the University of Tennessee, noted of the recent counseling exemption in the state: “The real problem with that is that the public doesn’t really know the difference between counselors and psychologists and social workers and therapists. It has a chilling effect, because the public and LGBT people didn’t know who would be accepting and who wouldn’t.”¹⁰³ Lisa Henderson of the Tennessee Counseling Association echoed that concern: “[A]ll the media attention around the law makes people less likely to reach out when they need help because they can’t trust counselors will provide good care to them. So people who are most vulnerable are not accessing care when they need to, and that’s a

¹⁰¹ Human Rights Watch telephone interview with Susan Berke Fogel, National Health Law Center, Los Angeles, CA, November 21, 2017.

¹⁰² Sejal Singh & Laura E. Durso, “Widespread Discrimination Continues to Shape LGBT People’s Lives in Both Subtle and Significant Ways,” Center for American Progress, May 2, 2017, <https://www.americanprogress.org/issues/lgbt/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways> (accessed June 15, 2018).

¹⁰³ Human Rights Watch telephone interview with Leticia Flores, University of Tennessee, Knoxville, TN, October 17, 2017.

dangerous thing.”¹⁰⁴ As KT Hiestand observed in her practice, “I know people have not sought help because of that law.”¹⁰⁵

Chris Sanders, the Executive Director of the Tennessee Equality Project, gave a concrete example of this effect. “A woman in Maury County contacted me and said she had been thinking about coming out to her therapist but decided not to, and she was in therapy about marital issues—so she had questions about the bill, and she hasn’t come out to her therapist as a result. That’s not anything the therapist did, she wasn’t turned away, but it was the fear of being turned away.”¹⁰⁶

Other LGBT individuals described how they had foregone a wide range of care because of concerns about how they would be treated. Clara B., the mother of a transgender teenager in Knoxville, said: “The dentist is a good example—[my son] hasn’t gone back in two years. They’re very religious people and [my son] said I don’t know how they feel about me and I don’t want to go. We’ve yet to agree on finding another dentist.”¹⁰⁷ Judith N., a transgender woman in East Tennessee, said:

I’ve tried to search for LGBT affirming doctors, but you can’t do that around here. They’re not listed. It’s all word of mouth. The combination of not having money anymore and the shitty insurance that goes with it, and then worrying about how I’ll be treated—I haven’t had anything I haven’t been able to recover from. If anything comes up, I hope it’s something I can have treated at Planned Parenthood, because they’re ridiculously good. But that’s an hour away. And that’d be more expensive because they’re out of network.¹⁰⁸

Even well-informed adults could harbor a reluctance to seek out health care. One interviewee noted that her same-sex partner of 10 years was sufficiently apprehensive about how she might be treated that she had never been to the gynecologist, despite

¹⁰⁴ Human Rights Watch telephone interview with Lisa Henderson, Tennessee Counseling Association, Nashville, TN, December 12, 2017.

¹⁰⁵ Human Rights Watch interview with KT Hiestand, Memphis, TN, January 12, 2018.

¹⁰⁶ Human Rights Watch interview with Chris Sanders, Tennessee Equality Project, Nashville, TN, January 9, 2018.

¹⁰⁷ Human Rights Watch interview with Carla B. (pseudonym), Knoxville, TN, December 9, 2017.

¹⁰⁸ Human Rights Watch interview with Judith N. (pseudonym), Johnson City, TN, December 10, 2017.

being a nurse and knowing she was supposed to go.¹⁰⁹ Studies have found that lesbian and bisexual women, particularly those who are gender non-conforming, are less likely to seek out gynecological care and less likely to be screened for colon, breast, and cervical cancer.¹¹⁰ With lower screening rates, lesbian and bisexual women face higher rates of breast and cervical cancer than heterosexual women.¹¹¹

Effects of Discrimination and Refusals

In interviews, LGBT people and medical practitioners voiced concerns about the practical and symbolic effects of discrimination and refusals by healthcare providers.

Some LGBT individuals circumvented medical guidance because of such discrimination. When transgender individuals were unable to obtain hormones or other medical care, for example, they at times bought them through alternative channels and administered them without medical supervision.¹¹²

Others sought to compartmentalize their care or withhold information from providers they did not trust. Charlie O., a gay man in Mississippi, said: “I’ve basically bifurcated health care. I go to Open Arms to have discussions about blood tests and Truvada, PrEP, and then have my regular doctor for health screenings, cancer screenings. I’ve self segregated.... And it’s hard to figure out where to look here. I’m lucky—I know doctors, so I can work behind the scenes to find who to go to. But a lot of people don’t have contact with doctors til they need one.”¹¹³ Carla B., the mother of a transgender teenager, observed: “You’re going to withhold information, you’re going to lie... You can’t treat someone and treat them

¹⁰⁹ Human Rights Watch interview with Linda O. (pseudonym), Memphis, TN, January 10, 2018.

¹¹⁰ Gwendolyn P. Quinn et al. “Cancer and Lesbian, Gay, Bisexual, Transgender/Transsexual, and Queer/Questioning (LGBTQ) Populations,” *CA: A Cancer Journal for Clinicians*, Vol. 65, No. 5 (2015), 384-400; KR Heistand, SG Horne & HM Levitt, “Effects of Gender Identity on Experiences of Healthcare for Sexual Minority Women,” *Journal of LGBT Health Research*, Vol. 3, No. 4 (2007), 15-27.

¹¹¹ Christina L. Tamargo et al., “Cancer and the LGBTQ Population: Quantitative and Qualitative Results from an Oncology Providers’ Survey on Knowledge, Attitudes, and Practice Behaviors,” *Journal of Clinical Medicine*, Vol. 6, No. 10 (2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5664008/#B23-jcm-06-00093> (accessed June 28, 2018).

¹¹² Human Rights Watch interview with Judith N. (pseudonym), Johnson City, TN, December 10, 2017; Human Rights Watch interview with Sam P. (pseudonym), Johnson City, TN, December 10, 2017; Human Rights Watch interview with Dara O. (pseudonym), Oklahoma City, OK, June 6, 2018; Human Rights Watch interview with Rachel Y. (pseudonym), Oklahoma City, OK, June 7, 2018.

¹¹³ Human Rights Watch interview with Charlie O. (pseudonym), Jackson, MS, November 27, 2017.

properly if you don't give them the right information. And it does affect people's health and well-being."¹¹⁴ As Shane Bierma observed, this can itself be damaging:

In rural communities, a lot of times LGBT individuals, they're not disclosing right away that they are part of the community, and then they've already gained an attachment to a provider and they disclose that, and then the provider rejects them, it further fuels this attachment rupture they've experienced time and time again. It feels like a weapon to me.¹¹⁵

Other LGBT people continued to access health care, but had anxiety about facing discrimination. Jami Contreras, whose daughter was refused service by a pediatrician because she had same-sex parents, said: "It wasn't violent, they didn't attack us, but your sense of security is gone. Is it going to be violence next time? You just don't know. And it's on all levels—health care, signing [our daughter] up for soccer, you make sure the coach and parents are okay. It's just sad that in 2018 we have to think about those things."¹¹⁶ Gail Stratton, a lesbian woman who co-leads a PFLAG chapter in Oxford, Mississippi, said: "I would say the most direct harm I see is that it increases the anxiety of LGBT people. It puts you on shaky ground where you're not sure that it's safe—not that you ever knew, but it's one more signal that you don't really belong here."¹¹⁷

Still others were unable to obtain care, and struggled with the toll it took on them. Sandra R., a transgender woman in Flint, Michigan, who had been unable to obtain gender-affirming surgery, explained:

Having gender dysphoria, the only way that a lot of it can be corrected for somebody in my situation, to be healthy and to be able to survive, is surgery. The surgery is the main issue as far as gender dysphoria. I've been diagnosed with severe depression, suicidal tendencies, severe anxiety. And I haven't been in the psych ward for two years now. And all they're treating is my symptoms, and not my gender dysphoria, which is the root of all the

¹¹⁴ Human Rights Watch interview with Carla B. (pseudonym), Knoxville, TN, December 9, 2017.

¹¹⁵ Human Rights Watch interview with Shane Bierma, Knoxville, TN, December 9, 2017.

¹¹⁶ Human Rights Watch interview with Jami Contreras, Ferndale, MI, January 18, 2018.

¹¹⁷ Human Rights Watch interview with Gail Stratton, Oxford, MS, January 13, 2017.

issues and would be resolved with surgery.... I have days where I just get tired of fighting. And I do shut down. I don't want anyone around. It's a constant battle.¹¹⁸

LGBT people also expressed concern about the discriminatory message that sweeping religious refusals send. Persephone Webb, a trans activist in Knoxville, Tennessee, said that “[i]t tells people who are prone to being bigoted to be a little braver, and a little braver. And we see through this—we know this is an attack on LGBT people.”¹¹⁹ Petra E., a transgender woman in Mississippi, had a similar assessment of HB 1523, the exemption law there. “1523 for me means that my safety is put at even more risk—that right now, I have my safe spaces because people know they’re not supposed to discriminate. With 1523 going into effect it’s going to empower people to not do their job, and to discriminate.”¹²⁰ Sarah H., the mother of a transgender girl in Tennessee, said “We know it’s difficult to find a doctor who’s going to be able to help us with our needs and be friendly and professional towards us. These laws, they’re really more symbolic than anything else. It’s really more of a, we don’t like queer people, and we’re allowed not to like you.”¹²¹

¹¹⁸ Human Rights Watch interview with Sandra R. (pseudonym), Flint, MI, January 19, 2018.

¹¹⁹ Human Rights Watch interview with Persephone Webb, Knoxville, TN, December 8, 2017.

¹²⁰ Human Rights Watch telephone interview with Petra E., Biloxi, MS, October 4, 2017.

¹²¹ Human Rights Watch interview with Sarah H. (pseudonym), Knoxville, TN, December 9, 2017.

III. Legal Obligations

The US federal government’s proposed withdrawal of regulatory language explicitly prohibiting discrimination in healthcare services, combined with its simultaneous expansion of religious exemptions, jeopardize the health and rights of a population that already faces stark healthcare disparities. The rights to equality and freedom of thought, conscience, and religion may seem at odds with each other in this context, but jurisprudence developed under international human rights law offers guidance on how to reconcile the two without compromising the right to freedom from discrimination.

Harmonizing Equality and Freedom of Thought, Conscience, and Religion

The United States is party to the International Covenant on Civil and Political Rights (ICCPR), which guarantees equal protection under the law as well as the freedom of thought, conscience, and religion.

Article 26 of the ICCPR states: “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”¹²² The UN Human Rights Committee, which provides authoritative guidance on the ICCPR, has determined that this provision also prohibits discrimination on the basis of sexual orientation.¹²³

¹²² ICCPR, art. 26.

¹²³ UN Human Rights Committee, *Toonen v Australia*, CCPR/C/50/D/488/1992 (March 31, 1994), <http://hrlibrary.umn.edu/undocs/html/vws488.htm> (accessed June 1, 2018). The Human Rights Committee frequently expresses concern about discrimination based on gender identity in its concluding observations on state compliance with the ICCPR. See UN Human Rights Committee, Concluding Observations: Azerbaijan, U.N. Doc CCPR/C/AZE/CO/4 (November 16, 2016), paras. 8-9; UN Human Rights Committee, Concluding Observations: Burkina Faso, U.N. Doc CCPR/C/BFA/CO/1 (October 17, 2016), paras. 13-14; UN Human Rights Committee, Concluding Observations: Colombia, U.N. Doc CCPR/C/COL/CO/7 (November 17, 2016), paras. 16-17; UN Human Rights Committee, Concluding Observations: Costa Rica, U.N. Doc CCPR/C/CRI/CO/6 (April 21, 2016), paras. 11-12; UN Human Rights Committee, Concluding Observations: Denmark, U.N. Doc CCPR/C/DNK/CO/6 (August 15, 2016), paras. 13-14; UN Human Rights Committee, Concluding Observations: Ecuador, U.N. Doc CCPR/C/ECU/CO/6 (August 11, 2016), paras. 11-12; UN Human Rights Committee, Concluding Observations: Ghana, U.N. Doc CCPR/C/GHA/CO/1 (August 9, 2016), paras. 43-44; UN Human Rights Committee, Concluding Observations: Jamaica, U.N. Doc CCPR/C/JAM/CO/4 (November 22, 2016), paras. 15-16; UN Human Rights Committee, Concluding Observations: Kazakhstan, U.N. Doc CCPR/C/KAZ/CO/2 (August 9, 2016), paras. 9-10; UN Human Rights Committee, Concluding Observations: Kuwait, U.N. Doc CCPR/C/KWT/CO/3 (August 11, 2016), paras. 12-13; UN Human Rights Committee, Concluding Observations: Morocco, U.N. Doc CCPR/C/MAR/CO/6 (December 1, 2016), paras. 11-12; UN Human

Article 18(1) of the ICCPR recognizes the right to freedom of thought, conscience and religion, which includes both the “freedom to have or to adopt a religion or belief of [a person’s] choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”¹²⁴

The Human Rights Committee has emphasized that article 18 “does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice,” but—recognizing that religious exercise may affect others—does permit limited restrictions on the freedom to *manifest* one’s religion or beliefs.¹²⁵ Under article 18(3), states may regulate the manifestation of religion or belief if, and only if, such regulations “are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.”¹²⁶

The UN Human Rights Committee has clarified that the freedom of thought, conscience, and religion does not protect religiously motivated discrimination against women, or racial and religious minorities.¹²⁷ It has urged states considering restrictions on the manifestation of religion or belief to “proceed from the need to protect all rights guaranteed under the Covenant, including the right to equality and non-discrimination.”¹²⁸

Rights Committee, Concluding Observations: Slovakia, U.N. Doc CCPR/C/SVK/CO/4 (November 22, 2016), paras. 14-15; UN Human Rights Committee, Concluding Observations: South Africa, U.N. Doc CCPR/C/ZAF/CO/1 (April 27, 2016), paras. 20-21.
¹²⁴ ICCPR art. 18(1).

¹²⁵ Human Rights Committee, General Comment 22, “Article 18: Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies,” 1994, UN Doc. HRI/GEN/1/Rev.1, paras. 3-4.

¹²⁶ ICCPR art. 18(3); see also art. 5(1) (“Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.”).

¹²⁷ See Human Rights Committee, General Comment 28, “Article 3 (The Equality of Rights Between Men and Women),” March 29, 2000, UN Doc. CCPR/C/21/Rev.1/Add.10, para. 21 (“Article 18 may not be relied upon to justify discrimination against women by reference to freedom of thought, conscience, and religion.”); Human Rights Committee, General Comment 22, “Article 18: Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies,” 1994, UN Doc. HRI/GEN/1/Rev.1, para. 2 (“The committee therefore views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.”); *ibid.* at 7 (noting that “no manifestation of religion or belief may amount to ... advocacy of national, racial, or religious hatred that constitutes incitement to discrimination” and that “States parties are under the obligation to enact laws to prohibit such acts.”).

¹²⁸ Human Rights Committee, General Comment 22, “Article 18: Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies,” 1994, UN Doc. HRI/GEN/1/Rev.1, para. 8.

Other Rights at Risk

The religious exemptions discussed in this report jeopardize the enjoyment of several fundamental human rights.

Right to Information

The right to information is set forth in numerous human rights treaties.¹²⁹ The ICESCR obliges state parties to provide complete and accurate information necessary for the protection and promotion of rights, including the right to health.¹³⁰ The United States has signed, but not ratified, the ICESCR and as such is not bound by its provisions. However, the treaty remains an authoritative source of guidance regarding the steps the US government should take to advance and safeguard the right to information. The Committee on Economic, Social and Cultural Rights, the expert body charged with interpreting the ICESCR, has stated that the right to health includes the right to health-related education and information, including on sexual and reproductive health.¹³¹

The proposed HHS rule expands existing protections to allow providers to decline to provide information they deem morally or religiously objectionable to their patients, while doing nothing to ensure that those patients have reliable alternative routes to secure that information. Denying medically accurate information to patients leaves them in the dark about their treatment options and prevents them from making an informed choice about which options to pursue.

Right to Health

Exemptions that deny or deter people from seeking healthcare services jeopardize the right to health. The ICESCR recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”¹³² It obligates governments to ensure the right to health is enjoyed without discrimination based on race, sex, religion, or

¹²⁹ ICCPR, art. 19(2); American Convention on Human Rights, art. 13(1). See also Inter-American Court, *Claude-Reyes and others Case*, Judgment of September 19, 2006 Inter-Am Ct.H.R., Series C. No. 151, para. 264.

¹³⁰ See ICESCR, article 2(2). See also CESCR, “General Comment No. 14, The Right to the Highest Attainable Standard of Health,” U.N. Doc. E/C.12/2000/4 (2000), paras. 12(b), 18, 19.

¹³¹ *Ibid.*, para. 11.

¹³² International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, art. 12.

“other status,” which the Committee on Economic, Social and Cultural Rights interprets to prohibit discrimination on the basis of sexual orientation and gender identity.¹³³ As noted above, the United States has signed, not ratified, the ICESCR and as such is not bound by its provisions. However, the Covenant remains a useful and authoritative guide to the steps governments should take to protect and advance the right to health.

When states enact laws allowing healthcare providers to deny service based on their personal objections to an individual’s sexual orientation or gender identity, they undermine the right to health. Individuals may be denied services outright; have difficulty finding services of comparable quality, accessibility, or affordability; or avoid seeking services for fear of being turned away.

The Committee on Economic, Social and Cultural Rights has noted that the right to health is threatened both by direct discrimination and by indirect discrimination, in which laws appear neutral on their face but disproportionately harm a minority group in practice.¹³⁴ To promote the right to health, the committee has thus urged states to “adopt measures, which should include legislation, to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds.”¹³⁵

¹³³ UN Committee on Economic, Social and Cultural Rights, General Comment No. 20: “Non-Discrimination in Economic, Social and Cultural Rights”, U.N. Doc. E/C.12/GC/20, July 2, 2009, para. 32.

¹³⁴ *Ibid.* para. 10.

¹³⁵ *Ibid.*, para. 11.

Recommendations

To the US Congress

- Enact the Equality Act or other legislation which would prohibit discrimination based on sexual orientation and gender identity in all federally funded healthcare programs and activities.
- Enact the Do No Harm Act, which would prevent the Religious Freedom Restoration Act from being used to carve out exemptions from federal laws and protections regarding nondiscrimination, labor, children's rights, and health care.

To the US Department of Justice

- Ensure that existing conscience protections are not misused to excuse or justify discrimination on the basis of race, sex, religion, sexual orientation, gender identity, and other classifications.

To the US Department of Health and Human Services

- Preserve and enforce protections against discrimination on the basis of sexual orientation and gender identity.
- Withdraw the proposed rule expanding religious exemptions that allows insurers and providers to deny available healthcare services because of a person's sexual orientation or gender identity.

To State Legislatures

- Prohibit discrimination on the basis of sexual orientation and gender identity in all state-funded healthcare programs and activities.
- Repeal sweeping religious exemptions that allow insurers and providers to deny available healthcare services because of a person's sexual orientation or gender identity.

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“You Don’t Want Second Best”

Anti-LGBT Discrimination in US Health Care

Lesbian, gay, bisexual, and transgender (LGBT) people in the United States often face daunting barriers to obtaining health care. In 2018, the Department of Health and Human Services (HHS) advanced two regulatory changes that would roll back antidiscrimination protections for transgender people and expand the grounds for providers to refuse service based on their moral or religious opposition to serving LGBT people, women seeking reproductive health services, and others.

Based on interviews with more than 80 LGBT people, advocates, and service providers, “*You Don’t Want Second Best*” documents the obstacles that LGBT people already encounter when seeking health care, and explains how the proposed changes at the federal level would seriously exacerbate existing difficulties. It recommends that HHS reconsider its proposed changes and take steps to protect LGBT people from discriminatory treatment, and urges lawmakers to strengthen nondiscrimination protections at the state and federal levels.

(above) Dr. Brittany Brooks meets with a patient at Open Arms Healthcare Center, a clinic in Jackson, MS, that focuses on alleviating healthcare disparities for underserved populations, with a particular focus on LGBT people.

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(front cover) Participants at the Trans Pride March on June 16, 2018 in Portland, OR, display a placard calling for stronger healthcare protections.

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