



September 21, 2020

Submitted online via www.regulations.gov

Regulations Division, Office of General Counsel
Department of Housing and Urban Development
451 7th Street SW, Room 10276
Washington, DC 20410-0500

Re: HUD Docket No. FR-6152-P-01, RIN 2506-AC53 Comments in Response to Proposed Rulemaking: Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs

Dear Office of General Counsel:

I am writing to register the National Health Care for the Homeless Council's strong opposition to the Department of Housing and Urban Development's (HUD) proposed rule change (RIN 2506-AC53; HUD Docket No. FR-6152-P-01) entitled, "Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs." This proposal allows shelter programs to deny an individual entry to the shelter if the individual seeking shelter is determined to be a sex that the shelter does not serve. The rule would allow an array of people working in or with the shelter (to include: "recipients, sub recipients, owners, operators, managers, or providers") the ability to determine an individual's sex "based on a good faith belief" that the person seeking shelter is not the sex they claim. We strongly oppose this rule and urge HUD to withdraw the rule in its entirety.

The National Health Care for the Homeless Council is a membership organization representing Health Care for the Homeless (HCH) health centers and other organizations providing health care to people experiencing homelessness. Our members offer a wide range of services to include comprehensive primary care, mental health and addiction treatment, medical respite care, supportive services in housing, case management, outreach, and health education. Nationally, 300 HCH programs serve over 1 million patients in 2,000+ locations across the country. We work every day to help our patients access shelter, housing, health care, and food assistance, so they can meet their basic needs and escape homelessness.

The proposed rule encourages discrimination and harmful action in shelters.

A “good faith belief” approach encourages program staff to partake in stereotyping and invasive questioning of very vulnerable people seeking shelter. We must emphasize how egregiously irresponsible it is to empower program staff to reject an individual’s self-determined identity. To do so is illegal discrimination, as held by the Supreme Court ruling that discriminating against members of the LGBTQ+ community is illegal sex discrimination (Bostock vs. Clayton County under Title VII of the 1964 Civil Rights Act).¹ Such action should never be taken in a shelter environment as encouraged by this proposal. Additionally, creating a requirement that the shelter provide a “transfer recommendation” to another shelter--after denying someone entry--is meaningless. Homeless service providers understand that a “recommendation” rarely results in immediate entry to a shelter. As described in the section below, providing someone with a recommendation for a shelter that serves a gender they do not identify with will likely do more harm than good. It is unthinkable that HUD would increase barriers to shelter by encouraging program staff to engage in discrimination and invasive personal questioning and then provide only a recommendation as means of making other arrangements.

The proposed rule puts vulnerable people at risk of violence and exacerbates health problems.

Refusing someone the right to self-identify as the gender they chose goes against evidence-based guidance on providing trauma-informed and culturally competent care for individuals experiencing homelessness.² By allowing program staff to turn people away, individuals seeking shelter will be left with the options of staying at an untenable shelter for a gender they do not identify with, or giving up and remaining on the streets. Both of these situations put LGBTQ+ individuals at a higher risk of assault, trauma, and exchanging sex for basic needs.³ As health care providers serving people without homes, we see the disproportionate violence our transgender patients experience and the fear they express about entering shelters designated for their opposing gender and/or sleeping on the streets. The resulting violence and trauma that may occur after being turned away from a shelter is compounded by the already increased risk of co-occurring psychosocial conditions and many other barriers to meeting basic needs that LGBTQ+ people face already.⁴ A shelter is often the only place someone can temporarily rest and recover from injury or illness, and offers an escape from the dangers of the streets for a population that is increasingly vulnerable. The proposed rule not only places people at immediate risk of violence, but also undermines their broader humanity and health.

The proposed rule goes against HUD’s mission and is needlessly cruel during a pandemic.

Proposing to limit access to shelter for members of the LGBTQ+ community and allowing shelter staff to make highly subjective and discriminatory judgements against an individual’s asserted identity is a degrading departure from HUD’s stated mission of creating “strong, sustainable, and inclusive

¹ Bostock v. Clayton Cty., Georgia, 2020 W.L. 3146686 (Supreme Court 2020).

² National Health Care for the Homeless Council (September 2016). *Serving Transgender and Nonconforming Persons*, https://nhchc.org/wp-content/uploads/2019/08/Increasing-access-and-quality-of-care-for-TGNC_FINAL090816.pdf

³ Brodie Fraser, Nevil Pierse, Elinor Chisholm, et al (July 26), *LGBTQIA+ Homelessness: A Review of the Literature*, doi: 10.3390/ijerph16152677, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6695950/>

⁴ National Health Care for the Homeless Council (September 2014). *Gender Minority & Homelessness: Transgender Population*, https://nhchc.org/wp-content/uploads/2019/08/in-focus_transgender_sep2014_final.pdf

communities." To advance this proposal is cruel no matter the circumstances, but to do so during a national pandemic is especially counter-productive. LGBTQ+ and other vulnerable populations have an increased need for services and shelter because of economic and housing crises created by COVID-19.⁵ Denying shelter will create additional barriers for individuals to get the services they need so they can take proper public health precautions to avoid infection and transmission.

We urge HUD to withdraw this harmful proposal and consider increasing housing stability for everyone, including the LGBTQ+ population. HUD should not be in the business of encouraging discrimination based on gender and denying vulnerable people services. If you would like to talk further about this issue, please contact Barbara DiPietro, PhD, Senior Policy Director, at 443-703-1346 or at bdipietro@nhchc.org.

Sincerely,



G. Robert Watts, MPH, MS, CPH

Chief Executive Officer

⁵ Outright Action International (2020). *Vulnerability Amplified: The Impact of the COVID-19 Pandemic on LGBTIQ People Global LGBT Human Rights*, <https://outrightinternational.org/content/vulnerability-amplified-impact-covid-19-pandemic-lgbtqi-people>