

Congress of the United States
Washington, DC 20515

May 1, 2020

The Honorable Alex M. Azar II
Secretary
U.S. Department of Health & Human Services
200 Independent Avenue, SW
Washington, DC 20201

Dear Secretary Azar:

As Chairs of House Committees with legislative and oversight jurisdiction over programs administered by the Department of Health and Human Services, we write in strong opposition to the finalization of the rule misleadingly entitled, “Nondiscrimination in Health and Health Education Programs or Activities.”¹ Despite its name, this rule is discriminatory and would remove many health care programs and activities from protections provided under the Affordable Care Act’s nondiscrimination requirements. It would also overturn core protections for LGBTQ+ people and other marginalized communities. At a time when the United States is grappling with the 2019 coronavirus (COVID-19) pandemic and access to health care services is so critical, we are disappointed that this Administration is once again taking steps to limit access to health care and embolden discrimination against some of the most vulnerable among us.

If finalized, this dangerous rule would open the door to discrimination against patients in express contradiction to the plain language and intent of the law, and would therefore be illegal.² Undermining protections for marginalized individuals at any time is unacceptable, but it is particularly egregious to do so during the worst global pandemic in over a century. Right now, the federal government should be working to ensure that all patients are able to access essential health care—including COVID-19 testing and treatment—but instead this rule would embolden discrimination and harm many people, including LGBTQ+ patients, women, individuals with limited English proficiency, and individuals with disabilities.³

On February 29, 2020, Vice President Mike Pence stated that responding to COVID-19 was “an all-hands-on-deck effort.”⁴ Yet, in spite of the ongoing threat posed by COVID-19, this

¹ Exec. Order No. 12, 866, *available at* www.reginfo.gov/public/do/eoDetails?rid=130416 (pending).

² 42 U.S.C. § 18116(a).

³ Letter from Chairman Robert C. “Bobby” Scott, House Committee on Education and Labor, Chairman Frank Pallone, Jr., House Committee on Energy and Commerce, and Chairman Richard E. Neal, House Committee on Ways and Means to The Honorable Alex M. Azar II, Secretary, Department of Health and Human Services (Aug. 15, 2019) (on file with the House Education and Labor Committee), <https://edlabor.house.gov/imo/media/doc/2019-08-151557%20Comment%20Letter%20SIGNED.pdf>.

⁴ James S. Brady, *Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Conference*, White House (Feb. 29, 2020, 1:51 PM), www.whitehouse.gov/briefings-statements/remarks-

The Honorable Alex M. Azar II

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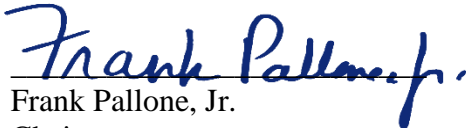
Administration has prioritized finalizing this harmful final rule, which was transmitted to the Office of Management and Budget on April 23, 2020 for final regulatory review.⁵

This rule poses an increased nationwide threat and may potentially force some patients to choose between facing discrimination or seeking necessary health care services in the midst of a pandemic. Moreover, this rule would inflict far-reaching and significant harm upon patients who have historically experienced discrimination in health care settings.

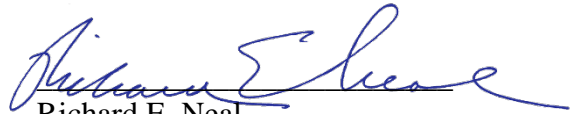
For the foregoing reasons, we strongly urge the Department not to finalize this rule and instead focus critical resources on responding to the COVID-19 pandemic.

Thank you for your immediate attention to this matter.

Sincerely,



Frank Pallone, Jr.
Chairman
Committee on Energy and Commerce
U.S. House of Representatives



Richard E. Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives



Robert C. "Bobby" Scott
Chairman
Committee on Education and Labor
U.S. House of Representatives



Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform
U.S. House of Representatives

cc: The Honorable Greg Walden, Ranking Member, Committee on Energy and Commerce
The Honorable Kevin Brady, Ranking Member, Committee on Ways and Means
The Honorable Virginia Foxx, Ranking Member, Committee on Education and Labor
The Honorable Jim Jordan, Ranking Member, Committee on Oversight and Reform

president-trump-vice-president-pence-members-coronavirus-task-force-press-conference-2/.

⁵ Exec. Order No. 12, 866, available at www.reginfo.gov/public/do/eoDetails?rrid=130416 (pending).