Kenneth Mayer, MD
Medical Research Director & Co-Chair, The Fenway Institute

Jennifer Potter, MD
LGBT Population Health Program Director & Co-Chair, The Fenway Institute

FACULTY

Kevin L. Ard, MD
Adjunct Faculty

Abigail Batchelder, PhD, MPH
Affiliated Investigator

Katie B. Biello, PhD
Research Scientist

Aaron J. Blashill, PhD
Affiliated Investigator

Stephen Boswell, MD
Senior Research Scientist

Wendy Bostwick, PhD, MPH
Adjunct Faculty

Sean Cahill, PhD
Director of Health Policy Research

Kerith J. Conron, ScD, MPH
Research Scientist

Brian Dodge, PhD
Adjunct Faculty

Holly Fontenot, PhD, RN, WHNP-BC
Adjunct Faculty

Alex Keuroghlian, MD, MPH
Director, Education & Training Programs

Douglas S. Krakower, MD
Adjunct Faculty

Lisa Krinsky, LICSW
Director of the LGBT Aging Project

Matthew Mimiaga, ScD, MPH
Senior Research Scientist

Conall O'Cleirigh, PhD
Affiliated Investigator

Bisola Ojikutu, MD, PhD
Adjunct Faculty

David W. Pantalone, PhD
Behavioral Scientist

Jennifer Putney, MSW, PhD
Adjunct Faculty

Sari L. Reisner, ScD
Research Scientist

Steve Safren, PhD
Affiliated Investigator

S. Wade Taylor, PhD
Associate Research Scientist

Marcy Gelman, RN, MSN, MPH
Director of Clinical Research

Bonnie McFarlane, MPP *Director of Administration*

October 27, 2017
U.S. Department of Health and Human Services
Office of the Assistant Secretary for Planning and Evaluation, Strategic Planning Team
Attn: Strategic Plan Comments
200 Independence Avenue, SW, Room 415
Washington, DC 20201

Submitted via email to HHSPlan@hhs.gov.

Public Comment regarding the U.S. Department of Health and Human Services Draft Strategic Plan FY 2018-2022

Please accept these comments regarding the Department of Health and Human Services Draft Strategic Plan for FY 2018-2022 on behalf of the Fenway Institute at Fenway Health. We are grateful for this opportunity to provide comment. The Fenway Institute works to make life healthier for those who are lesbian, gay, bisexual, and transgender (LGBT), people living with HIV/AIDS, and the larger community. We do this through research and evaluation, education and training, and policy analysis. We are the research division of Fenway Health, a federally qualified health center that serves about 30,000 patients each year. We would like to provide the following suggestions regarding the Draft Strategic Plan for FY 2018-2022:

1. *Add language that clarifies that discrimination in healthcare on the basis of sexual orientation and gender identity is prohibited.*

The Draft Strategic Plan FY 2018-2022 makes extensive mention of faith and faith-based organizations. We support faith-based organizations and understand that they can play an important role in healthcare. For example, Black churches have played a major role in promoting HIV screening and raising awareness of HIV. However, we have concerns about many of the specific points regarding faith-based organizations included in the Draft Strategic Plan FY 2018-2022, such as the directives that HHS will:

- "Vigorously enforce laws, regulations, and other authorities, especially Executive Order 13798 of May 4, 2017, Promoting Free Speech and Religious Liberty, to reduce burdens on the exercise of religious and moral convictions, promote equal and nondiscriminatory participation by faith-based organizations in HHS-funded or conducted activities, and remove barriers to the full and active engagement of faith-based organizations in the work of HHS through targeted outreach, education, and capacity building";
- "Implement Executive Order 13798 of May 4, 2017, Promoting Free Speech and Religious Liberty, and identify and remove barriers to, or burdens imposed on, the exercise of religious beliefs and/or moral convictions by persons or organizations partnering with, or served by HHS, and affirmatively

accommodate such beliefs and convictions, to ensure full and active engagement of persons of faith or moral convictions and of faith-based organizations in the work of HHS";

- "Promote equal and nondiscriminatory participation by persons of faith or moral conviction and by faith-based organizations in HHS-funded, HHS-regulated, and/or HHS-conducted activities, including through targeted outreach, education, and capacity building".

We are concerned that the language of the Draft Strategic Plan FY 2018-2022, namely that HHS will "vigorously enforce" and "affirmatively accommodate" religious beliefs, too closely mirrors the language of other religious exemption legislation that is being used to discriminate against LGBT people under the guise of religious freedom. For example, a Mississippi law, HB 1523, allows people to refuse to provide services based off of the specific religious beliefs that marriage is only between a man and a woman, that sex is properly reserved to such a marriage, and that male and female refer to a person's unchangeable sex determined by anatomy at birth. [1] This law allows business and individuals to discriminate against LGBT people in a number of ways, such as refusing to provide medically necessary gender affirmation treatments to transgender patients, or denying counseling and fertility services to lesbian and gay couples, for example. A law in Tennessee, HB 1840, allows therapists and counselors to refuse to provide mental health services to LGBT people based on the "sincerely held principles" of the provider. [2] The federal First Amendment Defense Act, if passed by Congress, would allow people and businesses to refuse to serve or otherwise discriminate against people based on the religious belief that marriage is only between a man and a woman and that sexual relations are properly reserved to such a marriage. This would authorize widespread discrimination by individuals, service providers, and business against same-sex couples and LGBT people.

The October 6, 2017 Department of Justice directive regarding religious liberty is also of grave concern to LGBT people and providers of health care to LGBT people, as is the First Amendment Defense Act (FADA), supported by the President, Vice President, Congressional leadership, and Attorney General, and expected to be introduced into Congress this session. Like the state laws mentioned above, the recent DOJ directive and FADA would also authorize and encourage anti-LGBT discrimination in health care and access to other services, at the hands of both private nonprofits and government agencies. Recent pronouncements from DOJ stating that Title VII of the Civil Rights Act and Title IX of the Education Amendments of 1972 don't cover sexual orientation and gender identity discrimination are also of concern.

This recent wave of religious exemption legislation, passed in response to the *Windsor* and *Obergefell* U.S. Supreme Court rulings upholding the right of

---

[1] Mississippi House of Representatives. 2016. "House Bill No. 1523." Available online at: http://billstatus.ls.state.ms.us/documents/2016/pdf/HB/1500-1599/HB1523SG.pdf

[2] Tennessee State Legislature. 2016. "An Act to amend Tennessee Code Annotated, Title 4; Title 49 and Title 63, relative to conscientious objections to the provision of counseling and therapy." Amendment No. 1. Available online at: http://www.capitol.tn.gov/Bills/109/Amend/HA1006.pdf

same-sex couples to marry, allows for discrimination against LGBT people under the guise of "free exercise" of religion. However, the right to religious freedom does not allow people the right to cause third party harm.[3] Denying services, including medical treatments, to LGBT people based on religious beliefs causes very real third party harm. Furthermore, LGBT people already experience widespread discrimination in healthcare,[4] and this discrimination acts as a barrier to seeking necessary routine and emergency care.[5] All of this contributes to the health disparities that disproportionately burden LGBT people. In order to make meaningful progress in reducing these health disparities to "enhance and protect the health and well-being of all Americans," as is the mission of HHS, it is essential that anti-LGBT discrimination in healthcare be addressed explicitly.

As such, we recommend that language be added to the Draft Strategic Plan FY 2018-2022 which clarifies that the language regarding faith-based organizations and religious beliefs should not be interpreted to mean that those providing health care and other services with HHS funding can discriminate against LGBT people or refuse to provide care to them based on religious beliefs. Free exercise of religion does not include the right to discriminate against others. Discrimination on the basis of sexual orientation and gender identity in healthcare should be explicitly prohibited by HHS regulation, and this ethical imperative should also be made clear in the HHS Strategic Plan.

2. *Reemphasize that LGBT people, people who are members of racial/ethnic minority groups, rural populations, and other populations experience health disparities in a manner that is more consistent with past HHS Strategic Plans.*

The Draft Strategic Plan FY 2018-2022 erases all mention of LGBT people and their unique health needs. This is inconsistent with the HHS Strategic Plan FY 2014-2018, which specifically addressed LGBT health needs several times. For example, the HHS Strategic Plan FY 2014-2018 discussed the importance of expanding access to LGBT culturally competent care, increasing research efforts to better understand LGBT health needs, supporting the healthy development and safety of LGBT youth, providing more supportive services to LGBT people, and increasing data collection on LGBT people.[6] This is also inconsistent with

[3] NeJaime D, Siegel RB. 2015. "Conscience wars: Complicity-based conscience claims in religion and politics." Yale Law Journal. 124: 2516-2591.
[4] Lambda Legal. 2010. When Health Care Isn't Caring: Lambda Legal's Survey of Discrimination against LGBT People and People with HIV. New York: Lambda Legal.
[5] Reisner SL, White Hughto JM, Dunham EE, Heflin KJ, Begenyi JBG, Coffey-Esquivel J, Cahill S. 2015, July 29. "Legal protections in public accommodations settings: a critical public health issue for transgender and gender-nonconforming people." The Milbank Quarterly. 93(3): 484-515.
[6] United States Department of Health and Human Services. *Strategic Plan FY 2014-2018*. Available online at: https://www.hhs.gov/about/strategic-plan/index.html

recommendations from the Institute of Medicine,[7] Healthy People 2020,[8] and the Joint Commission[9] which have all recommended an increased focus on LGBT health disparities. Similarly, the Centers for Medicare and Medicaid Services made recommendations to address LGBT health disparities in its 2015 *Equity Plan for Improving Quality in Medicare*.[10] The complete erasure of LGBT health from the Draft Strategic Plan FY 2018-2022 is a reversal from past years which have seen increased attention to reducing LGBT health disparities. We recommend that LGBT health needs be reemphasized in the Draft Strategic Plan FY 2018-2022.

The Draft Strategic Plan FY 2018-2022 also almost completely erases mention of people belonging to racial/ethnic minority groups and their unique health needs. There is only one mention in the draft plan of racial/ethnic disparities, even as there are 46 mentions of faith-based organizations. This is inconsistent with past HHS Strategic Plans from both Republican and Democratic Administrations which have emphasized the importance of addressing racial/ethnic health disparities. Racial and ethnic disparities in health outcomes and healthcare access have been well documented, and continued attention and emphasis is needed to better understand, address, and reduce racial/ethnic health disparities. In addition to racial/ethnic minorities, there are other marginalized populations that experience health disparities that should also be emphasized in the Draft Strategic Plan FY 2018-2022. For example, the CMS 2015 *Equity Plan for Improving Quality in Medicare* specifically recommends addressing the unique needs of people living in rural areas and people with disabilities. In order to reduce health disparities and improve the health and well-being of all Americans, the HHS Draft Strategic Plan FY 2018-2022 should specifically address the unique health needs of these marginalized populations. This would also ensure that the Draft Strategic Plan FY 2018-2022 is consistent with efforts from other federal agencies and health organizations which have committed to addressing the health disparities affecting these populations in recent years.

In order to make meaningful progress to reduce the health disparities that disproportionately burden these populations, it is important to promote the importance of cultural competency training in healthcare facilities and among

---

[7] Committee on Lesbian, Gay, Bisexual, and Transgender Health Issues and Research Gaps and Opportunities; Board on the Health of Select Populations; Institute of Medicine. 2011. The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding. Washington, DC: The National Academies Press. Available at: http://www.iom.edu/Reports/2011/The-Health-of-Lesbian-Gay-Bisexual-and-Transgender-People.aspx

[8] Office of Disease Prevention and Health Promotion. *Healthy People 2020: Lesbian, Gay, Bisexual, and Transgender Health*. United States Department of Health and Human Services. Available online at: https://www.healthypeople.gov/2020/topics-objectives/topic/lesbian-gay-bisexual-and-transgender-health

[9] The Joint Commission. 2011. *Advancing Effective Communication, Cultural Competence, and Patient- and Family-Centered Care for the Lesbian, Gay, Bisexual, and Transgender (LGBT) Community*. Available online at: http://www.jointcommission.org/assets/1/18/LGBTFieldGuide.pdf

[10] Centers for Medicare and Medicaid Services Office of Minority Health. September 2015. *The CMS Equity Plan for Improving Quality in Medicare*. Available online at: https://www.cms.gov/About-CMS/Agency-Information/OMH/OMH_Dwnld-CMS_EquityPlanforMedicare_090615.pdf

those providing supportive services, such as elder care professionals and case managers. The Draft Strategic Plan FY 2018-2022 states that HHS should "strengthen partnerships between…faith-based and community organizations to educate and train the workforce to provide high-quality, culturally competent care." We believe that this is important work, and that faith-based organizations can play a key role in providing cultural competency education. However, we believe that language should be added to the Draft Strategic Plan FY 2018-2022 that clarifies that any organizations that do provide education and training regarding cultural competency are prohibited from engaging in discrimination. For example, a faith-based organization delivering cultural competency training should be prohibited from promoting the rejection of LGBT clients based on religious beliefs as part of culturally competent care. This is not culturally competent. It will increase barriers to LGBT people's ability to access healthcare and other services. It will increase discrimination, which is already widespread. It is bad public policy.

Thank you for the opportunity to provide feedback. If you have any questions about this comment, please feel free to reach out to Sean Cahill, PhD, at scahill@fenwayhealth.org, or Tim Wang, MPH, at twang@fenwayhealth.org.

Sincerely,

Stephen Boswell, MD, FACP
President and Chief Executive Officer
Fenway Community Health Center

Kenneth Mayer, MD, FACP
Co-chair and Medical Research Director, The Fenway Institute
Director of HIV Prevention Research, Beth Israel Deaconess Medical Center
Professor of Medicine, Harvard Medical School

Jennifer Potter, MD
Co-chair, The Fenway Institute
Director of Women's Health, Fenway Health

Sean Cahill, PhD
Director of Health Policy Research
The Fenway Institute

Tim Wang, MPH
Health Policy Analyst
The Fenway Institute