

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

January 26, 2021

Norris W. Cochran
Acting Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Acting Secretary Cochran:

I write to request that the U.S. Department of Health and Human Services (HHS) prevent implementation of a harmful rule recently finalized by the Trump administration (RIN 0991-AC16) that is set to go into effect on February 11, 2021. This rule would remove Obama-era nondiscrimination protections from HHS-funded grant awards (45 CFR 75.300 (c) and (d)), which would allow sweeping taxpayer-funded discrimination based on sex (including sexual orientation and gender identity) and, in the case of foster and adoptive parents, religion. These regulatory changes could make it difficult for vulnerable populations, like LGBTQIA+ communities and religious minorities, from accessing vital programs and services funded by HHS.

I ask that HHS follow guidance outlined in White House Chief of Staff Ronald Klain's January 20, 2021 memorandum to heads of executive departments and agencies¹ and postpone RIN 0991-AC16's effective date 60 days to allow for a full review of the potential harm associated with this final rule. Given the Trump Administration's dismissal of serious challenges to the final rule in its response to public comment, I request that you revisit the comments provided earlier and open a new 30-day comment period. A new comment period would permit stakeholders to contribute new or updated comments in light of the ongoing COVID-19 pandemic, which has laid bare the urgent need to ensure that all vulnerable individuals, children, and families are protected and supported by HHS actions in an equitable way.

I am confident that your careful appraisal of this Trump final rule will reveal many of the harms it would cause throughout our great nation, providing ample ground for you to amend or rescind it and enforce Obama-era nondiscrimination protections instead. I have been outspoken about the

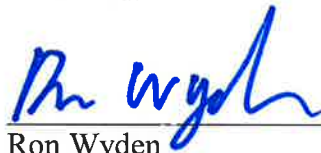
¹<https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/regulatory-freeze-pending-review/>

cruelty of this rule at every stage of the Trump Administration's rulemaking process². Notably, the final rule would have severe consequences for children and families in the child welfare system. By permitting faith-based foster care agencies to turn away qualified prospective parents on the basis of sexual orientation, gender identity, or religion, the final rule will reduce the number of available foster and adoptive homes and make it harder for children in the foster care system to find the loving homes they deserve. In areas where faith-based agencies are the primary foster care agencies available, children may even be subjected to homes that are hostile to their own beliefs and identities if this final rule is left to go into effect.

I appreciate how President Biden has encouraged agencies including HHS to identify all rules published hastily in the final hours of the Trump Administration. I urge you to use this guidance to delay the effective date of RIN 0991-AC16 and all other harmful Trump discriminatory regulations in HHS' purview.

I look forward to working collaboratively with you to ensure that HHS upholds its mission to serve and protect the health and wellbeing of all Americans and appreciate your prompt attention to this critical matter.

Sincerely,



Ron Wyden
Chairman
Senate Finance Committee

² Letter from Senate Finance Committee Ranking Member Ron Wyden and 46 other U.S. Senators to HHS Secretary Alex M. Azar II (December 18, 2019); Letter from Senate Finance Committee Ranking Member Ron Wyden and Senate Health, Education, Labor, and Pensions Committee Ranking Member Murray to HHS Secretary Alex M. Azar II (June 11, 2020).