

Plaintiffs Urge HHS to Fully Reverse Trump-Era Healthcare Discrimination Rule

Encouraged by Biden-Harris Administration's Initial Steps to Rescind Trump "Rollback Rule," Advocates Urge HHS to Take Further Steps to Reverse Regulation, Address the Harms It Has Caused Trump-Era "Rollback Rule" Undermines ACA's Nondiscrimination Protections for LGBTQ+ People, Patients Seeking Reproductive Care, English Language Learners, People Living with Chronic Conditions

(BOSTON, MA - May 11, 2021) - Minutes before a Monday federal court hearing in *Boston Alliance of LGBTQ+ Youth (BAGLY) et al v. HHS*, a lawsuit challenging the Trump-Pence Administration's rule undermining healthcare nondiscrimination protections contained in Section 1557 of the Affordable Care Act (ACA), the U.S. Department of Health and Human Services announced that the Office for Civil Rights will interpret and enforce Section 1557 and Title IX's prohibitions on discrimination based on sex to include discrimination on the basis of sexual orientation and gender identity. While Plaintiffs in the *BAGLY* case are encouraged by the announcement, HHS's actions fell far short of addressing all of the harms from the 2020 Rollback Rule that the lawsuit challenges.

The announcement, for example, does not address the 2020 rule's rollback of nondiscrimination protections for people who have obtained or are seeking reproductive health care, nor does it address provisions of the Rollback Rule related to language access for patients with limited-English proficiency. It also does nothing to address the significant change in scope of entities that are subject to the rule, which lets so many insurers off the hook from complying with these critical nondiscrimination protections. In court, Plaintiffs' attorneys pressed the government to rescind all challenged parts of the Rollback Rule and provide assurances that HHS will lawfully interpret and enforce Section 1557, including to provide the protections at issue in this lawsuit.

The complete Trump-era regulation attempted to roll back protections on the basis of sex — including pregnancy, gender identity and sex stereotyping — as well as protections for patients with limited-English proficiency and those living with chronic illnesses, including HIV. Because the issues raised in *BAGLY v. HHS* are broader than the proposed changes announced by HHS today, the U.S. District Court for the District of Massachusetts rejected the government's request for a stay of the case and instead scheduled a hearing on the government's motion to dismiss for June 3rd at 2:30 PM EST.

The *BAGLY v. HHS* Plaintiffs Darren Lazor, The Boston Alliance of Gay, Lesbian, Bisexual and Transgender Youth (BAGLY), Callen-Lorde Community Health Center, Campaign for Southern Equality, Equality California, Fenway Health, Indigenous Women Rising, CrescentCare, and Transgender Emergency Fund and their counsel at National Women's Law Center (NWLC), the Transgender Law Center (TLC), the Transgender Legal Defense & Education Fund (TLDEF), the Center for Health Law and Policy Innovation (CHLPI) of Harvard Law School and Hogan Lovells released the following joint statement:

"We are thrilled that the Biden-Harris Administration is taking steps to reverse Trump's dangerous rule that undermined health care protections for millions of people across the country. As we recover from a global pandemic, it's more important than ever that everyone has access to quality, affordable healthcare. Patients, especially the LGBTQ+ community, people seeking reproductive care, people with limited-English proficiency and people living with chronic conditions such as HIV, deserve health care, without fear of harassment and discrimination. We will continue fighting for a complete reversal of all challenged parts of the Rollback Rule and a commitment from HHS to enforce Section 1557 in a manner that protects our communities."

The lawsuit asserts that the new rule violates the Administrative Procedures Act by being contrary to law, arbitrary and capricious and a violation of the Equal Protection Clause of the 14th Amendment. Notably, the discriminatory rule was published on June 19, just days after the June 15, 2020 U.S. Supreme Court ruling in *Bostock v. Clayton County*, which found that it is unlawful sex discrimination to discriminate based on sexual orientation or gender identity. The lawsuit also asserts that the new rule will embolden discrimination and harm against LGBTQ+ patients and people seeking reproductive health care, further stigmatize abortion and other pregnancy-related care, harm patients with limited-English proficiency, including immigrants, and harm people with chronic illnesses, including those living with HIV. The rule will also create confusion about the scope of protections against discrimination under federal law.

Transgender people, like plaintiff Darren Lazor, already face disproportionate discrimination in health care settings, including mistreatment by insurers and humiliation and harassment by doctors — problems that are exacerbated for trans people of color and trans people living in rural regions and the U.S. South.

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About TLDEF

Transgender Legal Defense & Education Fund is committed to ending discrimination based upon gender identity and expression and to achieving equality for transgender people through test-case litigation, direct legal services, public policy, and public education efforts. For more information, visit [TLDEF.org](https://tldef.org).

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