



The Colorado Health Foundation™

September 18, 2020

Office of the General Counsel
Rules Docket Clerk
Department of Housing and Urban Development
451 Seventh Street SW, Room 10276
Washington, DC 20410-0001

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

The Colorado Health Foundation appreciates the opportunity to submit comments to the Department of Housing and Urban Development (HUD) on its proposed rule change published in the Federal Register on July 24, 2020 entitled, “Making Admission or Placement Determinations Based on Sex in Facilities Under Community Planning and Development Housing Programs.” We strongly oppose the proposed changes and urge HUD to withdraw this proposed rule.

The Colorado Health Foundation is the state’s largest private foundation and the third largest foundation focused on health in the nation. We work closely with partners in the private, public and nonprofit sectors to bring health in reach for all Coloradans. Our work is grounded in serving Coloradans living on low-incomes and who historically have had less power and privilege; putting the creation of health equity at the center of everything we do, as well as ensuring that our work is informed by the community and those we exist to serve.

Housing is a key determinant of health and plays a critical role in bringing health in reach for all Coloradans. Currently, Colorado, like most of the nation, is experiencing a significant affordable housing crisis, which has been exacerbated due to the COVID-19 pandemic. The current health crisis has caused thousands of Coloradans to very quickly become unemployed and without the stability of food or a safe place to call home. Additionally, those already experiencing homelessness in Colorado have found it incredibly challenging to navigate the COVID-19 crisis—constantly in search of a place to sleep where they can feel safe and avoid potential exposure to COVID-19. Shelters are often a person’s best access-point to programs that provide safe individual housing, an especially critical need during a global pandemic that endangers anyone

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who is forced to share living spaces with others, whether outdoors or in a shelter. Many transgender people are doing everything they can to stay housed right now but likely face homelessness when eviction and foreclosure moratoriums are lifted. Sadly, we will certainly see an increase in homelessness in all communities over the next year. In the recent [2020 Pulse Poll](#), 22 percent of Coloradans reported being somewhat or very worried about losing their home because they can't afford their rent or mortgage.

HUD's original Equal Access Rule, released in 2012, was developed to ensure that its housing programs are available and accessible to all eligible individuals and families regardless of sexual orientation, gender identity, or marital status. However, the 2012 rule did not address how transgender people should be accommodated in single-sex shelters or facilities. In 2016, HUD amended the rule to specify that individuals must be accommodated in accordance with their gender identity. The Colorado Health Foundation strongly opposes the new proposed changes to the Equal Access Rule that would remove critical protections meant to ensure the safety of any transgender person in need of HUD funded programs—especially homeless shelters. Evidence shows that transgender people who are homeless face frequent physical and sexual violence on the street. More than a quarter of transgender people have faced a bias-driven assault and the rates are even higher among transgender women and people of color. Under the proposed rule change, a transgender person who presents themselves for help at a shelter is no longer guaranteed the compassionate assistance that all others may receive. Instead, they may be subject to offensive and invasive questions by intake staff who, under the proposed rule, could question a person's gender based on an arbitrary, undefined "good faith" standard that may include judgement about their clothes or physical features. It is well established that protecting transgender people's access to gender specific facilities does not endanger the safety or privacy of others. Similar nondiscrimination protections have already been in place for many years and have helped increase fairness and opportunity for vulnerable people, and research also shows these protections have not produced any increase in public safety issues.

While the proposed rule change requires a facility that turns away transgender people to refer them to an alternate accommodation, we feel this remedy is inadequate. Many communities may already have limited shelter provider options, or every shelter provider in a community could prohibit entry based on the proposed rule's allowances. People experiencing homelessness already face multiple barriers to entry and this additional barrier for transgender and nonbinary people would likely cause vulnerable people to stay in dangerous or unsheltered situations.

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HUD exists to “build inclusive and sustainable communities free from discrimination.” However, the proposed roll-back would open the door to taxpayer-funded discrimination against the people in our communities who are at the greatest risk of violence and discrimination. Discrimination is never acceptable, but the impacts of this proposed rule are particularly dangerous as our country continues to struggle to suppress the pandemic.

The Colorado Health Foundation believes that HUD should be doing everything it can to scale up housing and homelessness services so they can be available to everyone who needs them, *not* creating policies that will make it harder to access housing. The existing Equal Access Rule strengthens our communities by allowing all people experiencing homelessness to access housing programs and safe shelter. We cannot allow discrimination to be used to keep safe housing out of reach for anyone, so we urge HUD not to finalize and implement this proposed rule.

We thank you for your consideration of our comments. If you have any questions, please contact Sara Monge, public policy officer, at smonge@coloradohealth.org or 303-953-3664.

Sincerely,



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The Colorado Health Foundation