

**Congress of the United States**  
**Washington, DC 20515**

May 23, 2018

The Honorable Mick Mulvaney  
Director  
Office of Management and Budget  
725 17th Street, NW  
Washington, DC 20503

Dear Director Mulvaney:

On Friday, April 17th, the Office of Management and Budget (OMB) indicated that it is reviewing a proposed rule, titled “Nondiscrimination in Health Programs or Activities.” Given the Trump-Pence Administration’s record on women’s health and rights, and in light of recent actions specifically related to the Affordable Care Act’s (ACA) Health Care Rights Law or Section 1557 of the ACA, OMB’s review of this proposal signals that the Trump-Pence Administration intends to roll back the first broad prohibition of sex discrimination in federal law. We urge you to reject a proposed rule that undermines these important protections.

The Department of Health and Human Services’ (HHS) recent actions in regard to the Health Care Rights Law’s prohibition on sex discrimination raise serious concerns about the agency’s intent. Specifically, in *Franciscan Alliance v. Azar*, HHS refused to defend its final regulation interpreting and implementing the law’s sex discrimination prohibition.<sup>1</sup> Moreover, HHS has removed language regarding sex stereotyping, gender identity and sexual orientation from the “Frequently Asked Questions” section of the HHS webpage about the Health Care Rights Law.<sup>2</sup> This strongly suggests that HHS plans to weaken these critical protections.

In drafting and enacting the Health Care Rights Law, members of the 111<sup>th</sup> Congress, including many of the signatories of this letter, clearly and unambiguously intended the Health Care Rights Law to prohibit sex discrimination in health care, including on the basis of termination of pregnancy, gender identity, and sexual orientation. Yet, even after passage of the statute, some health programs have continued to discriminate based on sex, leading to serious disparities in health care access and health insurance coverage. Some insurance companies, for example, continue to deny women comprehensive insurance coverage by barring insurance coverage of maternity care for an employee’s dependents.<sup>3</sup> Shamefully, women have been sexually assaulted or harassed by health care providers.<sup>4</sup> And further, people who are transgender also continue to experience discrimination when they try to access the most basic health services. One-third of transgender respondents in a 2015 survey reported that they “had at least one negative experience related to being transgender” when dealing with health providers in the past year.<sup>5</sup> Eight percent of lesbian, gay, bisexual, and queer people report that a doctor or other health

---

<sup>1</sup> 2016 WL 7638311, No. 7:16-cv-00108 (N.D. Tex. Dec. 31, 2016).

<sup>2</sup> *Section 1557: Frequently Asked Question*, DEP’T OF HEALTH AND HUMAN SERVS. (2018), <https://www.hhs.gov/civil-rights/for-individuals/section-1557/1557faqs/index.html>.

<sup>3</sup> NAT’L WOMEN’S LAW CENTER, Press Release, *Victory in Sex Discrimination Complaints Brought by NWLC: After Investigation by HHS, Employers Change Policies* (Jan. 26, 2017), <https://nwlc.org/press-releases/victory-in-sex-discrimination-complaints-brought-by-nwlc-after-investigation-by-hhs-employers-change-policies/>.

<sup>4</sup> Jess Horwitz and Juliet Linderman, *AP Investigation: #MeToo Has Little Impact on Medical World*, N.Y. TIMES (Apr. 16, 2018), <https://www.nytimes.com/aponline/2018/04/16/us/politics/ap-us-sexual-misconduct-doctors.html>.

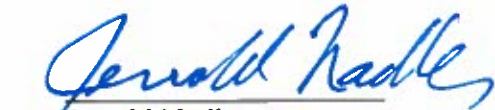
<sup>5</sup> Sandy E. James et al., NAT’L CTR. FOR TRANSGENDER EQUALITY, *The Report of the 2015 U.S. Transgender Survey* (Dec. 2016) at 9, available at <http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>.

care provider refused to see them.<sup>6</sup> The Health Care Rights Law protects people against these and other forms of discrimination. Crucially, it provides protections against discrimination based on one or a combination of prohibited reasons. For example, the Health Care Rights Law would protect a transgender individual who is denied care because of their HIV status or because English is not their first language.

In light of the Administration's recent policy changes intended to make it easier for health care providers – including insurance companies, hospitals, and doctors – to deny people health care because of the provider's personal beliefs, we remain extremely concerned that the proposed rule may create a religious exemption to the Health Care Rights Law.<sup>7</sup> Adding any type of religious exemption, or enforcing the Health Care Rights Law in a way that allows for a religious exemption, is antithetical to the purpose and language of the Health Care Rights Law and would undermine Congress's lawmaking authority. The statute contains only one exception, "except otherwise provided" in Title I of the ACA.<sup>8</sup> This plain language unambiguously bars application of any other exception. Allowing for a religious exemption would be an inappropriate administrative rewriting of unambiguous statutory language. As a former Member of Congress, and a staunch opponent of executive overreach in the last administration, we know you understand this concern. The Constitution is clear: only Congress, a democratically elected lawmaking body, may write the laws.

We urge you to abandon any proposal that would erode the Health Care Rights Law's important protection, undermine Congress' sole lawmaking authority, and allow health care providers to discriminate against their patients.

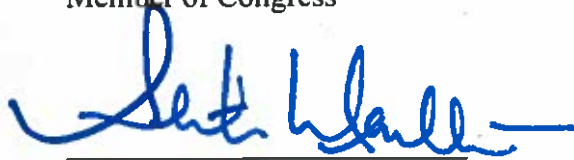
Sincerely,

  
Jerrold Nadler  
Member of Congress

  
Julia Brownley  
Member of Congress

  
Diana DeGette  
Member of Congress

  
Barbara Lee  
Member of Congress

  
Seth Moulton  
Member of Congress


  
Al Green  
Member of Congress

<sup>6</sup> Shabab Ahmed Mirza & Caitlin Rooney, *Discrimination Prevents LGBTQ People from Accessing Health Care*, CTR. FOR AM. PROGRESS (Jan. 18, 2018), <https://www.americanprogress.org/issues/lgbt/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care/>.

<sup>7</sup> See, e.g., Exec. Order No. 13, 798, 82 Fed. Reg. 21,675 (May 4, 2017), *Protecting Statutory Conscience Rights in Health Care*; Delegations of Authority, 83 Fed. Reg. 3880 (proposed Jan. 26, 2018) (*to be codified at 45 C.F.R. pt. 88*)

<sup>8</sup> 42 U.S.C. § 18116(a).

  
Eleanor Holmes Norton  
Member of Congress

  
Gwen Moore  
Member of Congress

  
Nanette Barragán  
Member of Congress

  
Yvette D. Clarke  
Member of Congress

  
Lois Frankel  
Member of Congress

  
Niki Tsongas  
Member of Congress

  
Jan Schakowsky  
Member of Congress

  
Bill Foster  
Member of Congress


  
Earl Blumenauer  
Member of Congress


  
Adam B. Schiff  
Member of Congress

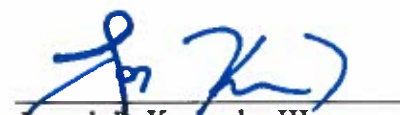
  
Jackie Speier  
Member of Congress

  
Kathy Castor  
Member of Congress

  
Grace F. Napolitano  
Member of Congress

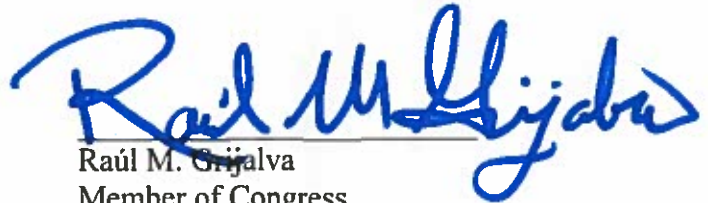
  
Anna G. Eshoo  
Member of Congress

  
Elizabeth H. Esty  
Member of Congress

  
Joseph P. Kennedy, III  
Member of Congress



Mark Pocan  
Member of Congress



Raúl M. Grijalva  
Member of Congress



Frederica S. Wilson  
Member of Congress



Peter A. DeFazio  
Member of Congress



José E. Serrano  
Member of Congress



John Garamendi  
Member of Congress



Sean Patrick Maloney  
Member of Congress



Ted W. Lieu  
Member of Congress



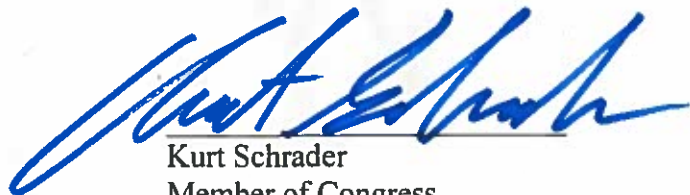
Paul Tonko  
Member of Congress



Chellie Pingree  
Member of Congress



Donald M. Payne, Jr.  
Member of Congress



Kurt Schrader  
Member of Congress



Ben Ray Luján  
Member of Congress



Debbie Dingell  
Member of Congress



Theodore E. Deutch  
Member of Congress



David N. Cicilline  
Member of Congress

Nydia M. Velázquez  
Nydia M. Velázquez  
Member of Congress

Doris Matsui  
Doris Matsui  
Member of Congress

Katherine M. Clark  
Katherine Clark  
Member of Congress

Anthony G. Brown  
Anthony G. Brown  
Member of Congress

Rosa L. DeLauro  
Rosa L. DeLauro  
Member of Congress

Eliot L. Engel  
Eliot L. Engel  
Member of Congress

Michelle Lujan Grisham  
Michelle Lujan Grisham  
Member of Congress

Lucille Roybal-Allard  
Lucille Roybal-Allard  
Member of Congress

Zoe Lofgren  
Zoe Lofgren  
Member of Congress

Mark Takano  
Mark Takano  
Member of Congress

Keith Ellison  
Keith Ellison  
Member of Congress

André Carson  
André Carson  
Member of Congress

Steve Cohen  
Steve Cohen  
Member of Congress

Ruben Gallego  
Ruben Gallego  
Member of Congress

Scott H. Peters  
Scott H. Peters  
Member of Congress

Salud O. Carbajal  
Salud O. Carbajal  
Member of Congress



Lloyd Doggett  
Member of Congress



Jimmy Gomez  
Member of Congress



Peter Welch  
Member of Congress



Kathleen M. Rice  
Member of Congress



Alcee L. Hastings  
Member of Congress



Dina Titus  
Member of Congress



David E. Price  
Member of Congress



Alan Lowenthal  
Member of Congress



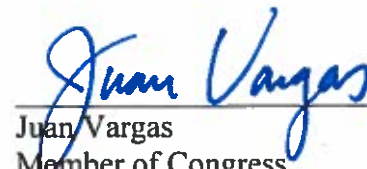
Zoe Lofgren  
Member of Congress



Suzanne Bonamici  
Member of Congress



Daniel T. Kildee  
Member of Congress



Juan Vargas  
Member of Congress



Ruben J. Kihuen  
Member of Congress



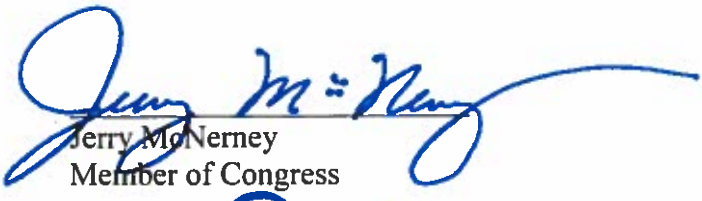
Matt Cartwright  
Member of Congress



Eddie Bernice Johnson  
Member of Congress



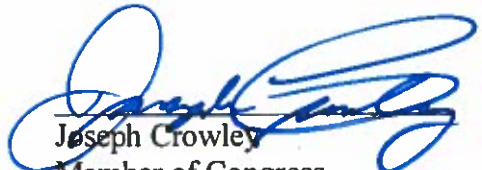
John Yarmuth  
Member of Congress

  
Jerry McNerney  
Member of Congress

  
Mark DeSaulnier  
Member of Congress

  
Jamie Raskin  
Member of Congress

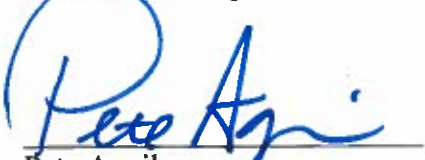
  
Raja Krishnamoorthi  
Member of Congress


  
Joseph Crowley  
Member of Congress


  
Betty McCollum  
Member of Congress

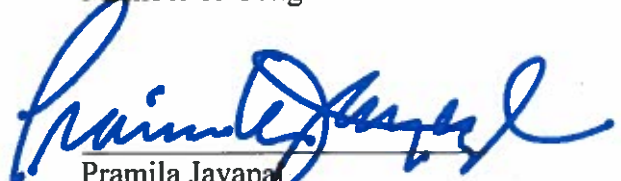
  
John Lewis  
Member of Congress


  
Brian Higgins  
Member of Congress

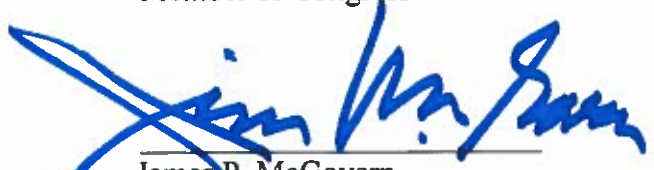
  
Pete Aguilar  
Member of Congress


  
Rick Larsen  
Member of Congress

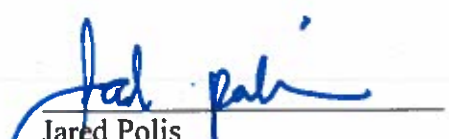
  
Carol Shea-Porter  
Member of Congress

  
Pramila Jayapal  
Member of Congress


  
Charlie Crist  
Member of Congress

  
James P. McGovern  
Member of Congress


  
Ro Khanna  
Member of Congress

  
Jared Polis  
Member of Congress

  
Luis Gutiérrez  
Member of Congress

  
Bobby L. Rush  
Member of Congress


  
Mike Thompson  
Member of Congress


  
Alma S. Adams  
Member of Congress

  
Sander M. Levin  
Member of Congress


  
David Scott  
Member of Congress


  
Lisa Blunt Rochester  
Member of Congress


  
Judy Chu  
Member of Congress


  
John P. Sarbanes  
Member of Congress

  
William R. Keating  
Member of Congress

  
Debbie Wasserman Schultz  
Member of Congress

  
Linda T. Sánchez  
Member of Congress

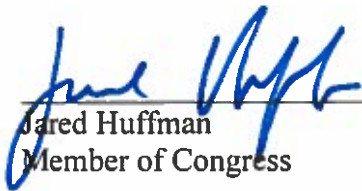
  
Raul Ruiz, M.D.  
Member of Congress

  
Joe Courtney  
Member of Congress

  
Michael E. Capuano  
Member of Congress

  
Suzan K. DelBene  
Member of Congress




  
Jared Huffman  
Member of Congress

  
Ami Bera, M.D.  
Member of Congress

  
Adriano Espaillat  
Member of Congress

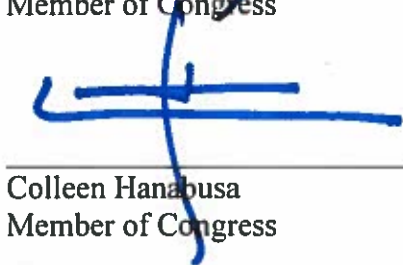
  
Tulsi Gabbard  
Member of Congress

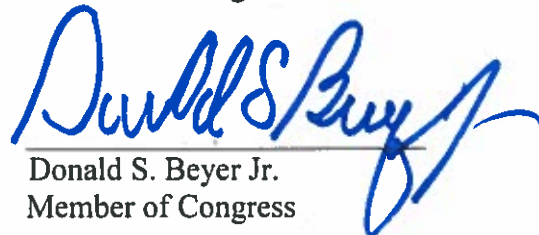
  
Marcia L. Fudge  
Member of Congress

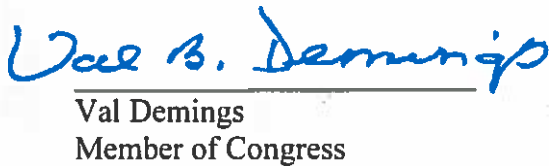
  
Gerald E. Connolly  
Member of Congress

  
Al Lawson  
Member of Congress

  
Carolyn B. Maloney  
Member of Congress

  
Colleen Hanabusa  
Member of Congress

  
Donald S. Beyer Jr.  
Member of Congress

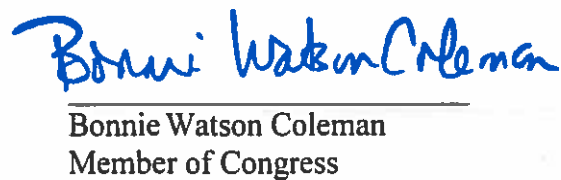
  
Val Demings  
Member of Congress

  
Marcy Kaptur  
Member of Congress

  
Brad Sherman  
Member of Congress

  
Robin L. Kelly  
Member of Congress

  
Gene Green  
Member of Congress

  
Bonnie Watson Coleman  
Member of Congress

*Terri Sewell*

Terri A. Sewell  
Member of Congress

*Darren Soto*

Darren Soto  
Member of Congress

*Marc Veasey*

Marc Veasey  
Member of Congress

*Adam Smith*

Adam Smith  
Member of Congress

*Norma J. Torres*

Norma J. Torres  
Member of Congress

*Mike Quigley*

Mike Quigley  
Member of Congress

*Karen Bass*

Karen Bass  
Member of Congress

*Bebo O'Rourke*

*J. Luis Correa*

*Bob Scott*

\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_

\_\_\_\_\_  
  
\_\_\_\_\_  
  
\_\_\_\_\_