

**Fenway Institute at Fenway Health comments on CMS Affordable Exchanges  
Guidance issued March 1, 2013**

Center for Consumer Information and Insurance Oversight  
Centers for Medicare and Medicaid Services  
U.S. Department of Health and Human Services  
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Sent to [FFEcomments@cms.hhs.gov](mailto:FFEcomments@cms.hhs.gov) on March 15, 2013.

Dear colleagues,

We write to comment on the Affordable Exchanges Guidance Letter to Insurers on Federally-Facilitated and State Partnership Exchanges issued March 1. Specifically, we write to comment on “Section 4, Benefit Design Review, Part i, Non-discrimination.”

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 public health advocacy.

The Fenway Institute at Fenway Health strongly supports the specific enumeration of gender identity and sexual orientation in the final paragraph of Section 4(i), and the guidance that “CMS will collect attestations that issuers’ QHPs [Qualified Health Plans] will not discriminate against individuals on the basis of health status, race, color, national origin, disability, age, sex, gender identity or sexual orientation, consistent with 45 C.F.R. § 156.200(e).”

We know that LGBT people are less likely to have insurance than the rest of the population, and that lesbians and transgender people are less likely to seek preventive health care.<sup>1</sup> Thousands of same-sex partners in dozens of states were stripped of employer-provided health insurance when anti-gay family measures passed there outlawing public sector domestic partner benefits. Private insurance companies have historically discriminated against gay men and same-sex couples. The Affordable Care Act’s prohibition of insurance companies’ canceling or denying coverage for pre-existing medical conditions will benefit the 1.2 million Americans living with HIV, at least half of whom are gay and bisexual men and transgender women. Nearly one third of people with HIV are currently uninsured.<sup>2</sup> This includes many gay and bisexual men and transgender women.<sup>3</sup>

Many LGBT people report discriminatory or culturally incompetent care, or fear such substandard care. The legacy of homosexuality and gender variance being treated by the psychiatric and medical professions as pathological has shaped LGBT communities’

<sup>1</sup> Valanis BG, Bowen DJ, Bassford T, Whitlock E et al. Sexual orientation and health: Comparisons in the women’s health initiative sample. *Arch Fam Med.* 2000;9(9):843.

<sup>2</sup> AIDS.gov. The Affordable Care Act and HIV/AIDS. <http://www.aids.gov/federal-resources/policies/health-care-reform/> Accessed January 31, 2013.

<sup>3</sup> Prejean J, Song R, Hernandez A, et al. Estimated HIV incidence in the United States, 2006-2009. *PLoS One.* 2011;6(8):e17502.

often negative and distrustful attitudes toward the health care establishment; this may be especially pronounced among older LGBT people.

There is a shameful shortage of LGBT-culturally competent primary medical care and mental health providers to serve communities. Frequently, health care providers are uncomfortable providing care to LGBT people. Although anti-gay attitudes among providers appear to have declined significantly over the past two decades, a 2007 study found that 18% of doctors in California are “sometimes” or “often” uncomfortable caring for gay patients.<sup>4</sup> Some of this discomfort may be related to lack of training in LGBT health issues. A recent survey of deans of medical education at medical schools in the US and Canada found that the median time dedicated to teaching LGBT-related content in the entire medical school curriculum was five hours. One third of medical schools reported that zero hours of LGBT content were taught. Only 24% of the medical school deans considered their school’s overall coverage of LGBT material as “good” or “very good” on a 5-category Likert scale.<sup>5</sup>

The Fenway Institute and nearly 150 other LGBT, HIV and public health organizations recently urged the Office of the National Coordinator of Health Information Technology to mandate the gathering of sexual orientation and gender identity data in clinical settings as part of Stage 3 meaningful use guidelines. Data collection in electronic health records (EHR) is an essential step toward understanding, reducing and eventually eliminating LGBT health disparities, a goal outlined in Health People 2020. LGBT data collection in EHR is supported by HP2020, the 2011 Institute of Medicine report on LGBT health, the Joint Commission, and other entities. However, some have raised concerns about the lack of LGBT nondiscrimination protections in health care provision covering the entire health system.

In addition to nondiscrimination protections covering Qualified Health Plans, we urge HHS to issue a nondiscrimination provision that will ensure LGBT Americans’ ability to access nondiscriminatory and clinically competent health care in all settings, regardless of sexual orientation or gender identity. Such a regulation would make it more likely that LGBT people will self-disclose to their health care providers in the 29 states that do not have a sexual orientation nondiscrimination law, and in the 34 states without a gender identity nondiscrimination law. Some states outlaw employment discrimination, but not public accommodations discrimination, leaving LGBT people, and especially transgender people, vulnerable to discrimination in health care.

Thank you for issuing this sexual orientation and gender identity nondiscrimination language in the proposed Affordable Exchanges Guidance. We urge you to adopt this language, and also urge you to take further steps with partners within HHS to protect all LGBT Americans’ ability to access quality health care free of discrimination.

Sincerely,

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<sup>4</sup> Smith, DM, Mathews, WC. Physicians’ attitudes toward homosexuality and HIV: Survey of a California medical society-revisited (PATHH-II). *Jnl Homosexuality*. 2007; 52: 1-9. Cited in Committee on Lesbian, Gay, Bisexual, and Transgender Health Issues and Research Gaps and Opportunities; Board on the Health of Select Populations; Institute of Medicine. *The Health of Lesbian, Gay, Bisexual, and Transgender (LGBT) People: Building a Foundation for Better Understanding*, Washington, DC: National Academies Press. 2011: 64. Obedin-Maliver J, Goldsmith ES, Stewart L, et al. Lesbian, gay, bisexual and transgender-related content in undergraduate medical education. *JAMA*. 2011; 306: 971-977.

<sup>5</sup>Obedin-Maliver et al. 2011.

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