Equal Access Proposed Rule Change Fact Sheet

On July 24, 2020, the U.S. Department of Housing and Urban Development (HUD) released a proposed rule change to the current Equal Access Rule, which would result in weakened protections for transgender, gender non-binary, and gender non-conforming individuals in HUD-funded shelters.

Current Equal Access Rule

The current rule, approved in 2016, mandates that HUD-assisted programs serve individuals in accordance with their gender identity, regardless of sex at birth. Providers are not allowed to subject individuals to intrusive questioning or ask them to provide any evidence of gender identity.

LAHSA Policy

In 2017, LAHSA authored an Equal Access Policy for the LA CoC, in accordance with the current HUD rule, to affirm the LA CoC’s commitment to ensuring safe and stable housing that is accessible to all residents. This policy pertains to all LAHSA-contracted programs, shelters, other buildings and facilities, benefits, services and accommodations, regardless of funding source. This policy will remain the standard for all LAHSA-administered services, regardless of if this HUD-proposed rule change is enacted or not.

HUD’s Proposed Changes

Would allow HUD-assisted services and accommodations to establish a policy to admit and place an individual based on actual or perceived sex. Providers may consider privacy, safety, or other relevant factors when making this decision and must make determinations of sex based on a “good faith belief.”

Who Would This Apply To:

- Recipients/subrecipients, as well as owners and operators of shelters and other facilities and providers of services funded in whole or in part by the HUD Community Planning and Development (CPD) office, including:
  - The Continuum of Care (CoC) program
  - The Emergency Solutions Grants (ESG) program
  - The Community Development Block Grant (CDBG) program
  - The Housing Opportunities for Persons With AIDS (HOPWA) program

- This proposed rule change will not be applicable to LAHSA-contracted programs due to the above-mentioned Equal Access Policy for the LA CoC, regardless of funding by a CPD program. If you have questions about your specific program, you can contact Hugo Mejia, Quality Standards Coordinator, at hmejia@lahsa.org.

What is a “Good Faith Belief:”

- A “good faith belief,” according to the proposed rule change, could be based on a combination of considerations such as height, the presence of facial hair, the presence of an Adam’s apple, and other physical characteristics.
- Evidence, such as government ID, may also be requested, but may not be “unduly intrusive.”
If a Client is Turned Away:

- Providers would be required to utilize their respective CoC’s Coordinated Entry System to provide a transfer recommendation to an alternative shelter or accommodation.

The Impact

- Across the country, 62% of the transgender population experiencing homelessness and 78.2% of the gender non-conforming population experiencing homelessness was unsheltered in 2019, compared to a third of the overall population experiencing homelessness.¹
- Transgender individuals, and particularly those who are Black/African American, Latinx, multiracial, and American Indian, experience higher rates of trauma, violence, poverty, unemployment, and harassment than other populations.²
- The proposed rule change only serves to further distance a marginalized community from needed services and exacerbate rates of homelessness by allowing federally-funded discrimination in emergency shelters.

How to Take Action

- LAHSA has submitted their comment in opposition to the proposed rule change on July 24, 2020.
- We strongly urge providers and advocates to submit their own public comments by September 22, 2020 at 8:59 pm PST through this portal. Submitting a large volume of comments is critical in both slowing down potential implementation of this rule and also building a potential basis for legal action to block implementation.
- A template comment can be found here, please contact Legislative Affairs Analyst, Samantha Vethavanam, at svethavanam@lahsa.org for an editable Word version.
- For more information on this rule change and ways to comment, please visit the Housing Saves Lives website, here, or contact svethavanam@lahsa.org.