



AMERICAN ATHEISTS

February 4, 2020

The Honorable Del. Karen Lewis Young
416 House Office Building
6 Bladen Street
Annapolis. MD 21401

Re: SUPPORT for HB 255, essential legislation to prevent health care discrimination by hospitals and related facilities.

Dear Delegate Young:

Thank you for your work to introduce HB 255, vital legislation to protect the health and well-being of Maryland citizens. HB 255 empowers patients to receive health care from hospitals and related facilities without fear of discrimination or harassment. American Atheists, on behalf of its 1,100 constituents in Maryland, endorses and strongly supports this life-saving bill. While we support the bill in its current form, we also believe that the bill could be improved by adding language to increase transparency for patients when they may be denied health care services as a result of federal or state laws. Even with robust nondiscrimination provisions applying to health care institutions, exemptions already in the law allow for de facto discrimination. We can mitigate the impact of these exemptions by increasing transparency for patients.

American Atheists is a national civil rights organization that works to achieve religious equality for all Americans by protecting what Thomas Jefferson called the “wall of separation” between government and religion created by the First Amendment. We strive to create an environment where atheism and atheists are accepted as members of our nation’s communities and where casual bigotry against our community is seen as abhorrent and unacceptable. We promote understanding of atheists through education, outreach, and community-building and work to end the stigma associated with being an atheist in America. As advocates for the health, safety, and well-being of all Americans, American Atheists objects to efforts to subordinate medical care to the religious beliefs of providers and institutions.

This legislation expands the already existing nondiscrimination protections¹ applicable to hospitals and related institutions (such as hospice or nursing care)² to include discrimination on the basis of sex, sexual orientation, gender identity, religion or creed, citizenship, age, physical or mental disability, genetic information, and ancestry. Moreover, the legislation protects patients from discrimination based on the type of treatment sought, which is especially important for LGBTQ people, people living with HIV, and people seeking access to reproductive services.

¹ MD Health-Gen Code § 19-355 (2018).

² MD Health-Gen Code § 19-301(o) (2018).

LGBTQ people and people living with HIV experience pervasive discrimination in the provision of health care, much of it justified by religious beliefs. According to an in-depth survey concerning health care discrimination against LGBTQ people and people living with HIV, more than half of all respondents reported that they have experienced at least one of the following types of discrimination in care: being refused needed care; health care professionals refusing to touch them or using excessive precautions; health care professionals using harsh or abusive language; being blamed for their health care status; or health care professionals being physically rough or abusive.³ LGBTQ people of color and people with lower socioeconomic status experience even higher levels of discriminatory and substandard care. Many members of the LGBTQ community have a “high degree of anticipation and belief that they w[ill] face discriminatory care” which ultimately causes many people to not seek the essential care that they need. Transgender, nonbinary, and gender nonconforming people experience even higher rates of discrimination and harassment in health care. According to the 2015 U.S. Transgender Survey, 33 percent had at least one negative experience in a health care setting relating to their gender identity in the past year.⁴ Rates were higher for Native respondents (50 percent), Middle Eastern respondents (40 percent), multiracial respondents (38 percent), and respondents with disabilities (42 percent). Undocumented transgender persons were found to be vulnerable to physical violence in doctors’ offices, hospitals, and emergency rooms.⁵ There are also geographic considerations that exacerbate discrimination against LGBTQ individuals.⁶ These realities have created a major barrier to health care services for LGBTQ people.

Although less pervasive than the barriers facing LGBTQ people, we note that atheists and nonreligious people also experience discrimination in health care. Our recent national survey of nearly 34,000 nonreligious people found that more than one in six participants (17.7 percent) had negative experiences relating to mental health services due to their nonreligious beliefs, nearly one in six (15.2 percent) had negative experiences relating to substance abuse services, and more than one in ten (10.7 percent) had negative experiences in other health care services.⁷

Nondiscrimination protections in health care are especially important due to the expansion of denial of care provisions in federal law⁸ and the growth in health care systems owned and operated by religious orders. For example, Catholic hospitals and health systems must follow the Ethical and Religious

³ Lambda Legal, *When Health Care Isn’t Caring, Lambda Legal’s Survey on Discrimination Against LGBT People and People Living with HIV* (2010), available at http://www.lambdalegal.org/sites/default/files/publications/downloads/whcic-report_when-health-care-isnt-caring_1.pdf (explaining that “almost 56 percent of lesbian, gay or bisexual (LGB) respondents had at least one of these experiences; 70 percent of transgender and gender-nonconforming respondents had one or more of these experiences; and nearly 63 percent of respondents living with HIV experienced one or more of these types of discrimination in health care. In almost every category, transgender and gender-nonconforming respondents reported higher levels of discrimination by health care providers.”).

⁴ S.E. James, et al., Nat’l Ctr. for Transgender Equality, *Report Of The 2015 U.S. Transgender Survey 96-97* (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

⁵ Grant JM, et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*, National LGBTQ Task Force and National Center for Transgender Equality (2011), available at http://www.thetaskforce.org/downloads/reports/reports/ntds_full.pdf.

⁶ Nat’l Women’s Law Ctr., *Fact Sheet: Health Care Refusals Harm Patients: The Threat to Reproductive Health Care* (2014), available at http://www.nwlc.org/sites/default/files/pdfs/refusals_harm_patients_repro_factsheet_5-30-14.pdf.

⁷ American Atheists, *Results of the U.S. Secular Survey*, not yet published (2019).

⁸ Dept. of Health and Human Services, Office for Civil Rights, *Protecting Statutory Conscience Rights in Health Care; Delegations of Authority*, 84 Fed. Reg. 23170, May 21, 2019. Note that this final rule is currently enjoined by multiple federal courts.

Directives for Catholic Health Care Services (“Directives”), which prohibit a wide range of reproductive health services, such as contraception, sterilization, abortion care, and other needed health care.⁹ Nonsectarian hospitals must often agree to comply with these Directives in order to merge with Catholic hospitals.¹⁰ Given these important legal developments, it is vital that Maryland lawmakers ensure that everyone have access to medically necessary health care that meets the standards of care, regardless of the religious beliefs of their providers.

Therefore, we urge you to consider adding language to this important bill to ensure that people seeking health care have transparency about when they may be denied various medical services. Without enhanced transparency requirements, patients could be left in the dark about these changes – without warning – even in emergency situations. While Maryland can’t change federal law, lawmakers can increase transparency when health care providers refuse to care for patients through federal denial of care provisions so that patients can make better informed decisions about their health care.

We suggest inclusion of the following language in order to increase health care transparency for Maryland residents:

(b) A hospital or related institution that uses or plans to use a denial of care provision to refuse to provide a health care service or referral for a health care service shall:

(1) provide written notice of all health care services the hospital or related institution refuses to provide to each patient before any health care service is initiated, and

(2) provide to the Office of Health Care Quality within the Maryland Department of Health a complete list of health care services the hospital or related institution refuses to provide at least annually, with a timeframe to be determined by the Department.

(c) Pursuant to subsection (b), “denial of care provision” means any federal or state law that purports to allow a health care entity to opt out of providing a health care service or referral, including MD Code, Health – General, § 20-214; Sections 1303(b)(4) and 1553 of the Affordable Care Act (42 U.S.C. §§18113, 18023(b)(4)); the Church Amendments (42 U.S.C. § 300a-7); the Coats-Snowe Amendment (42 U.S.C. §238n); the Religious Freedom Restoration Act (42 U.S.C. § 2000bb et seq.); the Weldon Amendment (e.g., Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2019, Pub. L. No. 115-245, Div. B., §507(d)); and 45 C.F.R. Part 88.

Like health care discrimination, denial of care has a disproportionate impact on LGBTQ people and people seeking reproductive services. In 19 states, including Maryland, women of color are more likely than white women to give birth in Catholic hospitals, where religious restrictions on reproductive health

⁹ U.S. Conf. of Catholic Bishops, *Ethical and Religious Directives for Catholic Health Services*, 5th ed. (2009), available at <http://www.usccb.org/issues-and-action/human-life-and-dignity/health-care/upload/Ethical-Religious-Directives-Catholic-Health-Care-Services-fifth-edition-2009.pdf> (Directive 41 of the Ethical and Religious Directives for Catholic Health Care states: “Homologous artificial fertilization is prohibited when it separates procreation from the marital act in its unitive significance.”).

¹⁰ Elizabeth B. Deutsch, *Expanding Conscience, Shrinking Care: The Crisis in Access to Reproductive Care and the Affordable Care Act’s Nondiscrimination Mandate*, 124 Yale L.J. 2470, 2488-89 (2015).

care can put women's lives at risk.¹¹ Moreover, nearly one in five LGBTQ persons, including 31% of transgender people, report it would be difficult or impossible to get the health care they need at another hospital if they were turned away.¹² The inclusion of language to increase transparency would complement the nondiscrimination protections in HB 255, tackling barriers for vulnerable people within Maryland's health care system.

Thank you for introducing this important legislation to protect the health and safety of Maryland residents. American Atheists strongly supports HB 255, and we hope that you will consider additional provisions to ensure that Maryland residents are able to access health care without discrimination and to make well-informed health care decisions. If you should have any questions regarding American Atheists' support for HB 255, please contact me at 908.276.7300 x309 or by email at agill@atheists.org.

Sincerely,



Alison Gill, Esq.
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American Atheists

¹¹ *Bearing Faith: The Limits of Catholic Health Care for Women of Color*, Columbia Law Sch. (Jan. 19, 2018), <https://www.law.columbia.edu/events/bearing-faith-limits-catholic-health-care-women-color>.

¹² Shabab Ahmed Mirza & Caitlin Rooney, *Discrimination Prevents LGBTQ People from Accessing Health Care*, Ctr. for Am. Progress (Jan. 18, 2018, 9:00 AM), <https://www.americanprogress.org/issues/lgbt/news/2018/01/18/445130/discrimination-prevents-lgbtq-people-accessing-health-care/>.