



Washington, DC's Whitman-Walker Health is a client in one of Lambda Legal's suits against Health and Human Services. Pictured: former Whitman-Walker Health board member, patient and transgender activist **Achim Howard** and Whitman-Walker physician assistant **Barbara Lewis**.

Courtesy Whitman-Walker Health

# CAN'T STOP WON'T STOP

COVID-19 hasn't slowed opponents threatening LGBTQ people's access to health care. **But Lambda Legal isn't letting them get away with it.**

**I**n just a few months, our world has been dramatically transformed. The COVID-19 epidemic—in many ways reminiscent of the HIV/AIDS crisis that both devastated and empowered the LGBTQ community—has claimed tens of thousands of lives in the U.S., sickened many more, crippled the economy and thrown countless lives into fear and uncertainty.

Through it all, we've witnessed acts of courage on the part of state and local officials, healthcare workers and everyday Americans. But at a time when everyone should be laser-focused on saving lives and protecting the most vulnerable, too many in both our federal and state governments are doing the opposite. Even as COVID-19 news dominates the

headlines, they're pushing cruel and discriminatory policies against LGBTQ people, particularly in our access to competent, non-biased health care.

Lambda Legal's attorneys, working from home, have not slowed down. We're determined to neutralize efforts that hurt our community and to advance efforts that protect us—needed now more than ever.

## THREATS TO HEALTH CARE

Many Americans are feeling vulnerable and frightened about access to health care in the age of COVID-19. But the Trump administration is pushing policies which put that care at risk for millions, including LGBTQ people and people living with HIV.

Health and Human Services' (HHS) proposed De-

nial of Care Rule would invite health care workers to deny medical treatment, information and services to patients because of personal religious or moral objections—and force health care centers to accommodate such employees. If they don't, facilities risk losing much-needed federal funding.

Nightmare scenarios are not theoretical. In a declaration to the court, a doctor at the L.A. LGBT Center—which serves 17,000 patients and is a client in our case against HHS—told of a transgender woman who arrived at the Center hemorrhaging blood. A major emergency medical facility in Los Angeles had turned her away three days earlier. The ER doctor there had refused to touch her, saying, “I don't know what you want me to do with this.”

Lambda Legal has been on it, since well before the coronavirus pandemic. In November, Lambda—with partners Americans United for Separation of Church and State, the Center for Reproductive Rights, and the County of Santa Clara, California—won its federal court case against the Denial of Care Rule, a win that struck it down in its entirety.

“Not only does the rule invite discrimination,” says Lambda Legal Senior Attorney Jamie Glikberg. “It is infeasible to implement, likely forcing many health care facilities to eliminate services such as reproductive and LGBTQ care, leaving millions across the United States without access to critical health care.”

Says Camilla B. Taylor, Lambda Legal Director of Constitutional Litigation, “The LGBT community is



Courtesy SAGE

HHS's decision not to enforce its own antidiscrimination regulation imperils LGBTQ people, particularly seniors and youth. Pictured: **Ellen Ensig-Brodsky, 87**, a client of SAGE in New York City

disproportionately vulnerable to COVID-19 complications. LGBT people already are at greater risk for certain types of cancer and other underlying conditions. People living with HIV who are not yet in treatment may also be at greater risk. The providers we represent are often those of last resort for LGBT people. They not only treat individual patients, but are also

## MORE HEALTH ACTION

**NATIONAL:** On April 27, Lambda Legal and Immigration Equality, along with co-counsel Vinson & Elkins, demanded that ICE release two gay men from Cuba living with HIV, seeking asylum in the U.S. and detained since October 2019. “It is impossible for people in ICE detention to abide by public health coronavirus guidelines, such as social distancing and frequent hand-washing,” says Lambda Legal Staff Attorney Puneet Cheema. On April 30, ICE released the men and they are safely living with sponsors.

**LOUISIANA:** Lambda Legal reached a favorable settlement, including important policy changes, for William “Liam” Pierce, who was denied a job as a sheriff's deputy because he is living with HIV. “Someone's HIV status is irrelevant to their ability to safely perform a job, and using it to deny employment is discrimination,” says Lambda Legal HIV Project Director Scott Schoettes.

**NORTH CAROLINA:** On March 11, a U.S. District Court judge denied North Carolina's request to dismiss our lawsuit challenging the state's exclusion of transition-related health care from its public employee health plan. “We are pleased our plaintiffs will get to have their day in court,” says Tara Borelli, Lambda Legal Counsel.

**TEXAS:** On April 24, Lambda Legal urged Texas Gov. Greg Abbott and the Commissioner of Health Services to expand Medicaid coverage so all uninsured Texans can access critical testing and care during the COVID-19 pandemic. Especially vulnerable are transgender Texans, “34 percent of whom live in poverty and 77 percent [of whom] lack identify documents that match their gender,” notes Lambda Legal South Central Regional Director Avery Belyeu.

critical to protecting public health—now more than ever.”

Lambda is representing some of these LGBTQ-serving providers in our effort to get HHS to do its job—ensure the health and well-being of all Americans. Among those are the L.A. LGBT Center, which has stayed open during the current COVID-19 crisis, and D.C.’s Whitman-Walker Health, which has transformed its practice to offer in-person respiratory clinics and COVID-19 testing.

The proposed HHS rule threatens their access to federal funding, including Medicaid, Medicare and Ryan White [for HIV/AIDS]. The rule also would prohibit providers from asking job applicants if they had an objection to providing certain types of care before hiring them. The rule also would prevent healthcare providers from insisting that their staff with a religious objection still stabilize a patient in an emergency until a substitute staffer could be found.

At a hearing last fall, the Department of Justice (DOJ) was asked: if a woman were bleeding out from an ectopic pregnancy—a life-threatening condition—and needed an emergency abortion to save her own life, could an ambulance driver or EMT with a religious objection eject her from the ambulance?

Courtesy Whitman-Walker Health



**Naseema Shafi**, CEO at Whitman-Walker Health, says, "Whitman-Walker will always be committed to care of the highest quality for everyone in our community, and we will continue to fight for our values, and for our community, at every level."

Incredibly, DOJ answered, "Yes."

The judge vacated the rule, which halted its enforcement. But the DOJ is appealing, and our case is now before the 9th Circuit. "We're hopeful that we can continue to stop this rule from ever from taking effect," says Taylor, "so that our clients—who are doing the heroic work of keeping LGBTQ people safe during a pandemic—can continue to do their job."

## REVERSING PROTECTIONS FOR LGBTQ PEOPLE

To make a bad situation worse, HHS has also decided not to enforce its own, previously-established rule governing its grantees and barring sexual orientation and gender identity discrimination (the agency administers a half trillion dollars in grants). Lambda Legal, in partnership with Democracy Forward, is suing HHS on behalf of Family Equality, True Colors United and SAGE.

The decision not to enforce the nondiscrimination rule threatens LGBTQ youth and older adults, already among the most marginalized members of the LGBTQ community. They have a right to services from HHS grantees free of discrimination. LGBTQ youth in child welfare settings may be subjected to increased verbal and physical abuse and condemnation of their sexual orientation and/or gender identity. HHS's decision also puts at greater risk LGBT older adults, who are more likely to be economically insecure because of a lifetime of discrimination in employment and housing and rely on HHS grantees for services like meal delivery.

"This is another example of the Trump administration turning its back on LGBTQ people and flouting the rule of law," says Lambda Legal Staff Attorney Puneet Cheema.

The Trump Administration and HHS are also trying to dismantle protections for LGBTQ people regarding health care. At the time of this writing, HHS is expected to finalize changes to the rules under the Affordable Care Act's (ACA) nondiscrimination provision, known as Section 1557. Currently, the ACA nondiscrimination rules define discrimination on the basis of sex to include discrimination based on gender identity or sex stereotypes.

HHS's proposed rule change would carve-out LGBT people from this provision and diminish other protections. The proposed rule "would only sow confusion in health care and encourage more insurers to discriminate," says Sasha Buchert, Co-Director of our Transgender Rights Project, who drafted Lambda Legal's comments objecting to the proposed changes. Senior Attorney and Health Care Specialist Omar Gonzalez-Pagan is leading the team preparing a legal challenge over the rule change once it is announced.

## CRIMINALIZING CARE FOR YOUTH

Attacks on access to care are also happening at the state level. Alabama legislators, instead of focusing 24-7 on protecting residents from COVID-19, are plotting to pass Senate bill 219, which would deny transgender children life-saving medical care and school support. "I can't think of anything more shameful than trying to harm children while Alabama residents suffer and die at needlessly elevated rates," says Lambda Legal Staff Attorney Carl Charles.

The COVID-era attacks on transgender people and youth don't stop at health care. In Idaho, Governor Brad Little signed into law a bill that prevents trans people from participating in school sports—and another that prevents them from updating their birth certificates, despite a federal court ruling Lambda Legal won two years ago declaring such a policy unconstitutional. In response, Lambda Legal has filed a motion with the federal court to confirm that its ruling prohibits Idaho from enforcing this transphobic new law.

"So far this year, we've already faced more than a dozen bills aiming to block needed medical care for transgender youth and nearly two dozen aiming to ban trans youth from school sports. It is a concerted, lies-based, deeply hurtful attack on children," says Charles. "It is truly unconscionable that state and federal leaders are prioritizing harming trans young people during a historic catastrophe."

## UNITED WE STAND

On April 20, Lambda Legal, along with nearly 200 national, state, and local organizations, sent a letter to Congressional leaders asking that they ensure the protection of vulnerable communities in any COVID-19 response legislation.

As a community, we've always been resilient, resourceful and compassionate in a crisis. Now is no exception. As Lambda Legal continues to fight to protect our hard-fought rights in the face of COVID-19, the entire Lambda Legal team wishes you and your loved ones health and safety. **LL**



THE  
GUARDIAN  
SOCIETY

# GIVING TO LAMBDA LEGAL GIVES LGBTQ KIDS A CHANCE AT THE HAPPINESS WE HAVE

Help ensure that the rights we have won are enforced and defended for generations to come. When you establish a legacy with Lambda Legal through your will, retirement account, life insurance or trust, you help safeguard our community's future.

 **Lambda Legal**  
making the case for equality

**JOIN TODAY** [lambdalegal.org/donate](https://lambdalegal.org/donate) | 120 Wall Street, 19th Floor, NY, NY 10005 | 212.809.8585