

September 6, 2023

U.S. Department of Health and Human Services
Office of the Assistant Secretary for Financial Resources
Room 514-G, Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

RE: Health and Human Services Grant Regulation; Proposed Rule, 88 Fed. Reg. 44750 (RIN 0945-AA19)

We are grateful for the opportunity to provide comments to the Office for Civil Rights (“OCR”) of the U.S. Department of Health and Human Services (“HHS”) on the Notice of Proposed Rulemaking Regarding Nondiscrimination in Health and Health Education Programs or Activities (the “Proposed Rule”). *See* 88 Fed. Reg. 44,750 (July 13, 2023).

The undersigned are scholars of law and public policy affiliated with the Williams Institute at the University of California, Los Angeles School of Law. The Williams Institute is a research center dedicated to conducting rigorous and independent academic research on sexual orientation and gender identity, including on health disparities facing LGBT people and legal protections against discrimination related to sexual orientation and gender identity.

We write to provide information about the LGBT population in the U.S. and the existence and impact of discrimination based on sexual orientation and gender identity. We also offer two recommendations the Department could consider in order to clarify existing non-discrimination requirements pertaining to HHS award programs and to ensure that LGBT beneficiaries have equal access to HHS-funded activities and services.

I. LGBTQ People Are a Significant Population in the US

LGBT people comprise approximately 4.5% of the U.S. adult population.¹ The Williams Institute estimates that approximately 11 million adults in the U.S. identify as LGBT, including approximately 1.3 million adults who are transgender.² In the U.S., younger populations are more likely to identify as LGBT. At least 9.5% of the U.S. youth population (ages 13–17), or

¹ KERITH J. CONRON & SHOSHANA K. GOLDBERG, WILLIAMS INST., ADULT LGBT POPULATION IN THE UNITED STATES 1 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Adult-US-Pop-Jul-2020.pdf>.

² JODY L. HERMAN, ANDREW R. FLORES & KATHRYN K. O’NEILL, WILLIAMS INST., HOW MANY ADULTS AND YOUTH IDENTIFY AS TRANSGENDER IN THE UNITED STATES? 4 (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pop-Update-Jun-2022.pdf> [hereinafter: HERMAN ET AL., TRANSGENDER ADULTS].

nearly 2 million youth, identifies as LGBT.³ This estimate includes 300,000 youth in that age range who identify as transgender (1.4% of the youth population ages 13–17).⁴

LGBT adults in the U.S. are demographically diverse. Drawing from Gallup Daily Tracking data collected between 2015 and 2017, the Williams Institute estimated that 58% of LGBT adults are female.⁵ In terms of racial and ethnic diversity, 21% of LGBT adults identify as Latino/a or Hispanic, 12% as Black, 3% as Asian or Pacific Islander, 1% as American Indian or Alaska Native, and 5% as more than one race.⁶ And, a recent Institute study found that Latinx⁷ people, American Indian or Alaska Native people, and biracial/multiracial groups are more likely than white people to identify as transgender.⁸

Many LGBT people are living with same-sex partners and raising children. The Census Bureau recently estimated, based on 2019 data from the American Community Survey, that approximately 980,000 households were headed by a same-sex couple.⁹ The Census Bureau further determined that nearly 181,000 of those households were raising children under the age of 18.¹⁰ Separately, using a variety of data sources, the Williams Institute found in a recent study that 27% of LBQ women had a child under 18 in their household, with 32% of LBQ women of color having a minor child in their home.¹¹

II. Evidence of LGBT Discrimination in Areas Addressed by HHS Award Programs

The Proposed Rule would expressly prohibit discrimination based on sexual orientation and gender identity, as forms of sex discrimination, in connection with HHS service programs established under 13 federal statutes.¹² These programs reach a range of communities across the U.S. by providing assistance to youth and adults who experience health disparities, including

³ KERITH J. CONRON, WILLIAMS INST., LGBT YOUTH POPULATION IN THE UNITED STATES 2 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Youth-US-Pop-Sep-2020.pdf>.

⁴ HERMAN ET AL., TRANSGENDER ADULTS, *supra* note 2, at 4.

⁵ *LGBT Demographic Data Interactive*, WILLIAMS INST. (2019), <https://williamsinstitute.law.ucla.edu/visualization/lgbt-stats/?topic=LGBT#demographic>.

⁶ *Id.*

⁷ The term Latinx is a gender-neutral alternative to Latino or Latina and has been used by LGBTQ people, young people, and others as an inclusive term that embraces “a wide variety of racial, national, and even gender-based identifications.” ED MORALES, *LATINX: THE NEW FORCE IN AMERICAN POLITICS AND CULTURE* (2018).

⁸ HERMAN ET AL., TRANSGENDER ADULTS, *supra* note 2, at 6.

⁹ LAQUITTA WALKER & DANIELLE TAYLOR, U.S. CENSUS BUREAU, *SAME-SEX COUPLE HOUSEHOLDS: 2019* (2021), <https://www.census.gov/content/dam/Census/library/publications/2021/acs/acsbr-005.pdf>. Using data from the Current Population Survey, the Census Bureau also estimated that as many as 191,000 children may be living with same-sex parents. *Who is Living Together? Same-Sex Couples in the United States*, CENSUS.GOV (Nov. 19, 2019), <https://www.census.gov/library/visualizations/2019/comm/living-together-same-sex.html>.

¹⁰ *Id.*

¹¹ BIANCA D.M. WILSON ET AL., WILLIAMS INST., *HEALTH AND SOCIOECONOMIC WELL-BEING OF LBQ WOMEN IN THE US* 8 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LBQ-Women-Mar-2021.pdf> [hereinafter: WILSON ET AL., LBQ WOMEN].

¹² 88 Fed. Reg. 44,750, 44,759-60 (July 13, 2023)

those who suffer from serious mental health conditions or substance use; low-income individuals, including pregnant people and parents; those who are homeless or at risk of becoming homeless; survivors of intimate partner violence; refugees; and healthcare workers and students seeking to enter the healthcare field.¹³ Research shows that LGBT people are a part of each of these communities—in some cases, they are overrepresented among these communities. Research also indicates that LGBT people often face discrimination in accessing services or other programs in the areas covered by the grant programs, establishing the importance of the protections set forth in the proposed rule.

A. LGBTQ People Experience Health Disparities

Health disparities between LGBTQ and non-LGBTQ people are well documented. Disparities are especially pronounced among LBQ women, gender minority individuals, and LGBTQ people of color. The minority stress model, explained more fully below, suggests that health disparities are connected to and exacerbated by discrimination against LGBTQ people.

Physical Health

Many LGBTQ people report poor physical health. Data from the Williams Institute’s Generations and TransPop studies show that one in five (20.8%) LGBTQ people report that their general health is fair or poor.¹⁴ Subpopulations of LGBTQ people who are likely to experience marginalization based on multiple characteristics, including women, transgender people, and people of color, are more likely than other populations to report fair or poor health. In the same studies, LBQ women (24.0%) and transgender people (25.9%) were more likely to report fair or poor general health than GBQ men (13.9%).¹⁵ In addition, in a study of differences across LGBT people by race, more than a quarter (27%) of LGBT adults of color reported that their overall health was only fair or poor, compared to 22% of white LGBT adults.¹⁶

Research also indicates that LGBT people are more likely to report that their health is fair or poor than non-LGBT people.¹⁷ An analysis of data from the TransPop study found that

¹³ 8 U.S.C. § 1522 (2022); 2 U.S.C. § 290cc–33 (2022); 42 U.S.C. § 290ff–1 (2022); 42 U.S.C. § 295m (2022); 42 U.S.C. § 296g (2022); 42 U.S.C. § 300w–7 (2022); 42 U.S.C. § 300x–57 (2022); 42 U.S.C. § 708 (2022); 42 U.S.C. § 5151 (2022); 42 U.S.C. § 862 (2022); 42 U.S.C. § 9849 (2022); 42 U.S.C. § 9918 (2022); 42 U.S.C. § 10406 (2022).

¹⁴ ILAN H. MEYER, BIANCA D.M. WILSON & KATHRYN O’NEILL, WILLIAMS INST., *LGBTQ PEOPLE IN THE US: SELECT FINDINGS FROM THE GENERATIONS AND TRANSPop STUDIES 30* (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Generations-TransPop-Toplines-Jun-2021.pdf>.

¹⁵ *Id.*

¹⁶ BIANCA D.M. WILSON, LAUREN BOUTON & CHRISTY MALLORY, WILLIAMS INST., *RACIAL DIFFERENCES AMONG LGBT ADULTS IN THE U.S.: LGBT ADULTS AT THE INTERSECTION OF RACE 1* (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Race-Comparison-Jan-2022.pdf>.

¹⁷ Ethan C. Cicero et al., *The Health Status of Transgender and Gender Nonbinary Adults in the United States*, 15 PLoSONE e0228765 (2020); Gilbert Gonzales & Carrie Henning-Smith, *Health Disparities by Sexual Orientation: Results and Implications from the Behavioral Risk Factor Surveillance System*, 42 J. COMMUNITY HEALTH 1163

transgender adults were more likely to report that their health was fair or poor, and reported experiencing poor health days more frequently, than cisgender adults.¹⁸ Similarly, in a study of LBQ women, the Williams Institute found that nearly 29% of LBQ women described their health as only fair or poor, compared to 19% of straight women, with a higher proportion of LBQ women of color describing their health as only fair or poor compared with white LBQ women.¹⁹

Research also shows that a substantial percentage of LGBT people experience serious health conditions, including life-threatening conditions.²⁰ The Generations and TransPop studies found that among LGBTQ people, 18.0% had asthma, 16.3% had high blood pressure, 10.2% had diabetes, 6.0% had heart disease, and 3.0% had cancer.²¹ An analysis of TransPop data also found that transgender people were more likely than cisgender people to report having emphysema and ulcers.²² Furthermore, series of reports by the Williams Institute focused on the well-being of LGBT people at the intersection of race found that LGBT people of every race reported similar or higher rates of serious health conditions compared to non-LGBT people, including asthma, cancer, heart attack, and diabetes.²³

These findings are consistent with those of other studies based on large government datasets. For example, an analysis of data from the Behavioral Risk Factor Surveillance System (BRFSS) collected between 2014 and 2020 found that LGB people are at higher odds than non-LGB people of having asthma, arthritis, diabetes, kidney disease, hypertension, cardiovascular disease,

(2017). *C.f.* Ilan H. Meyer et al., *Demographic Characteristics and Health Status of Transgender Adults in Select US Regions: Behavioral Risk Factor Surveillance System, 2014*, 107 AM. J. PUB. HEALTH 582 (2017) (finding that transgender individuals are more likely to report fair or poor general health and higher prevalence of myocardial infarction, but similar rates of other health conditions as cisgender people).

¹⁸ Jamie L. Feldman et al., *Health and Healthcare Access in the US Transgender Population Health (TransPop) Survey*, 9 ANDROLOGY 1707 (2021).

¹⁹ WILSON ET AL., LBQ WOMEN, *supra* note 11, at 8.

²⁰ KATHRYN O'NEILL, WILLIAMS INST., HEALTH VULNERABILITIES TO COVID-19 AMONG LGBT ADULTS IN CALIFORNIA 8 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-COVID-CA-Health-May-2020.pdf> [hereinafter: O'NEILL, LGBT ADULTS & COVID-19]; ILAN H. MEYER & SOON KYU CHOI, WILLIAMS INST., VULNERABILITIES TO COVID-19 AMONG OLDER LGBT ADULTS IN CALIFORNIA 1–2 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Older-LGB-COVID-CA-Apr-2020.pdf> [hereinafter: MEYER & CHOI, OLDER LGBT ADULTS & COVID-19].

²¹ MEYER, WILSON & O'NEILL, LGBTQ PEOPLE IN THE US: SELECT FINDINGS FROM THE GENERATIONS AND TRANSPop STUDIES, *supra* note 14, at 29.

²² Feldman et al., *supra* note 18.

²³ SOON KYU CHOI, BIANCA D.M. WILSON & CHRISTY MALLORY, WILLIAMS INST., BLACK LGBT ADULTS IN THE US 21 (2021), <https://williamsinstitute.law.ucla.edu/publications/black-lgbt-adults-in-the-us/>; BIANCA D.M. WILSON, LAUREN BOUTON & CHRISTY MALLORY, WHITE LGBT ADULTS IN THE US 20 (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-White-SES-Jan-2022.pdf>; BIANCA D.M. WILSON, LAUREN BOUTON & CHRISTY MALLORY, AMERICAN INDIAN AND ALASKAN NATIVE LGBT ADULTS IN THE US 24 (2021); [HTTPS://WILLIAMSINSTITUTE.LAW.UCLA.EDU/WP-CONTENT/UPLOADS/LGBT-AIAN-SES-OCT-2021.PDF](https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-AIAN-SES-OCT-2021.pdf); BIANCA D.M. WILSON, CHRISTY MALLORY, LAUREN BOUTON & SOON KYU CHOI, LATINX LGBT ADULTS IN THE US 24 (2021); <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Latinx-SES-Sep-2021.pdf>; SOON KYU CHOI, BIANCA D.M. WILSON, LAUREN BOUTON & CHRISTY MALLORY, WILLIAMS INST., AAPI LGBT ADULTS IN THE US 230 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-AAPI-SES-May-2021.pdf> [hereinafter, collectively: RACE & WELLBEING SERIES].

heart attack, stroke, and chronic obstructive pulmonary disease.²⁴ Another analysis of BRFSS data collected in 2014 and 2015 found that lesbian and bisexual women were more likely to report worse physical outcomes such as activity limitations, arthritis, asthma, and chronic obstructive pulmonary disease compared to heterosexual women.²⁵

Similar trends have been documented regarding HIV risk and incidence – with gay and bisexual men of color and transgender people over-represented in diagnosis. For example, the CDC estimated that among the 34,800 new HIV diagnoses in the U.S. in 2019, 70% (24,500) were attributed to individuals reporting male-to-male sexual contact.²⁶ Among those reporting such contact—or in other words, gay, bisexual, and other men who have sex with men (“MSM”)—CDC research indicated that race likely also plays a role in HIV incidence, with Black MSM as the most likely to report being impacted by HIV among groups monitored through CDC data sources.²⁷ The CDC also estimated that 2% of new HIV diagnoses in 2019 were among transgender people.²⁸ Research on the overall burden of HIV on transgender populations indicates that 25% to 28% of transgender people in the U.S. are living with HIV.²⁹

Recent Williams Institute research on the impact of the COVID-19 pandemic on U.S. adults also suggests that LGBT people of color and gender minority people disproportionately experienced its impacts,³⁰ which could inform their ongoing healthcare needs.

Mental Health

Research shows a high prevalence of suicide attempts and ideation, as well as depression and anxiety, among LGBTQ people.³¹ For example, a Williams Institute analysis of data from the

²⁴ Manasvi Pinnamaneni et al., *Disparities in Chronic Physical Health Conditions in Sexual Minority People Using the United States Behavioral Risk Factor Surveillance System*, 28 PREVENTATIVE MED. REP. 1 (2022).

²⁵ Gonzales & Henning-Smith, *supra* note 1717, at 1169.

²⁶ *HIV and Gay and Bisexual Men: HIV Incidence*, CTRS. FOR DISEASE CONTROL & PREVENTION (Sept. 16, 2021), <https://www.cdc.gov/hiv/group/msm/msm-content/incidence.html>.

²⁷ *HIV and African American Gay and Bisexual Men*, CTRS. FOR DISEASE CONTROL & PREVENTION (Jan. 11, 2022) <https://www.cdc.gov/hiv/group/msm/bmsm.html>.

²⁸ *HIV and Transgender People: HIV Diagnoses*, CTRS. FOR DISEASE CONTROL & PREVENTION (Apr. 13, 2022), <https://www.cdc.gov/hiv/group/gender/transgender/hiv-diagnoses.html>.

²⁹ Jeffrey S. Becasen et al., *Estimating the Prevalence of HIV and Sexual Behaviors among the US Transgender Population: A Systematic Review and Meta-Analysis, 2006-2017*, 109 J. AM. PUBLIC HEALTH e1 (2019).

³⁰ O’NEILL, LGBT ADULTS & COVID-19, *supra* note 20; MEYER & CHOI, OLDER LGBT ADULTS & COVID-19, *supra* note 20. See also Thom File & Joey Marshall, *Household Pulse Survey Shows LGBT Adults More Likely to Report Living in Households With Food and Economic Insecurity Than Non-LGBT Respondents*, U.S. CENSUS BUREAU (Aug. 11, 2021), <https://www.census.gov/library/stories/2021/08/lgbt-community-harder-hit-by-economic-impact-of-pandemic.html> (noting the U.S. Census Bureau’s similar findings, based on data collected during the first waves of the Household Pulse Survey that included SOGI measures).

³¹ See, e.g., Wendy B. Bostwick et al., *Dimensions of Sexual Orientation and the Prevalence of Mood and Anxiety Disorders in the United States*, 100 AM. J. PUBLIC HEALTH 468 (2010); Michael King et al., *A Systematic Review of Mental Disorder, Suicide, and Deliberate Self Harm in Lesbian, Gay and Bisexual People*, 70 BMC PSYCHIATRY 1 (2008), <https://bmcp psychiatry.biomedcentral.com/track/pdf/10.1186/1471-244X-8-70.pdf>; Kimberly F. Balsam et al., *Mental Health of Lesbian, Gay, Bisexual, and Heterosexual Siblings*, 114 J. ABNORMAL PSYCH. 471 (2005);

Generations and TransPop studies found that three-quarters (75.6%) of LGBTQ people reported suicidal ideation over the course of their lives, with nearly one-third (29.9%) having made a suicide attempt.³² In terms of mental health outcomes, three-quarters (75.6%) of LGBTQ people reported experiencing moderate psychological distress or serious mental illness over the 30 days prior to the survey, with 28.2% reporting serious mental illness.³³

Other research establishes that LGBT people are more likely to report negative mental health outcomes than non-LGBT people. Across Williams Institute reports examining LGBT wellbeing at the intersection of race, LGBT adults of every race were more likely to have been diagnosed with depression than non-LGBT adults.³⁴ For example, 26% of Black LGBT adults have been diagnosed with depression, compared to 15% of Black non-LGBT adults.³⁵ These findings are consistent with findings from other studies. An analysis of BRFSS data collected in 2014 and 2015 found that gay and bisexual men had higher odds of experiencing mental distress than heterosexual men, and lesbian and bisexual women had higher odds of experiencing mental distress and depression than heterosexual women.³⁶

Researchers have observed especially high rates of internalized stigma and suicidal ideation among transgender people, even when compared to their cisgender LGB peers.³⁷ For example, the Generations and TransPop studies found that 42.0% of transgender people had made a suicide attempt compared to 31.6% of LBQ cisgender women and 21.5% of GBQ cisgender men.³⁸ Among transgender respondents to the USTS, 82% seriously thought about suicide at some point in their lives, with 48% reporting such thoughts in the previous year and 40% reporting actually having attempted suicide at some point in their lives.³⁹ Among USTS

Susan D. Cochran & Vickie M. Mays, *Relation between Psychiatric Syndromes and Behaviorally Defined Sexual Orientation in a Sample of the US Population*, 151 J. EPIDEMIOLOGY 516 (2000). For comprehensive reviews of research on LGBT health, see INSTITUTE OF MEDICINE, *THE HEALTH OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER PEOPLE: BUILDING A FOUNDATION FOR BETTER UNDERSTANDING* (2011); *THE HEALTH OF SEXUAL MINORITIES: PUBLIC HEALTH PERSPECTIVES ON LESBIAN, GAY, BISEXUAL AND TRANSGENDER POPULATIONS* (Ilan H. Meyer & Mary E. Northridge eds., 2007).

³² MEYER, WILSON & O'NEILL, *LGBTQ PEOPLE IN THE US: SELECT FINDINGS FROM THE GENERATIONS AND TRANSPOP STUDIES*, *supra* note 14, at 32.

³³ *Id.*

³⁴ RACE & WELLBEING SERIES, *supra* note 23.

³⁵ See, e.g., CHOI, WILSON & MALLORY, *BLACK LGBT ADULTS IN THE US*, *supra* note 23, at 18.

³⁶ Gonzales & Henning-Smith, *supra* note 17.

³⁷ See, e.g., Walter O. Bockting et al., *Stigma, Mental Health, and Resilience in an Online Sample of the US Transgender Population*, 103 AM. J. PUBLIC HEALTH 943 (2013); Dejun Su et al., *Mental Health Disparities within the LGBT Population: A Comparison between Transgender and Non-Transgender Individuals*, 1 TRANSGENDER HEALTH 12 (2016); Tyler G. Lefevor et al., *Health Disparities between Genderqueer, Transgender, and Cisgender Individuals: An Extension of Minority Stress Theory*, 66 J. COUNSELING PSYCH. 385 (2019).

³⁸ MEYER, WILSON & O'NEILL, *LGBTQ PEOPLE IN THE US: SELECT FINDINGS FROM THE GENERATIONS AND TRANSPOP STUDIES*, *supra* note 14, at 32.

³⁹ SANDY E. JAMES ET AL., NAT'L CTR. FOR TRANSGENDER EQUALITY, *REPORT OF THE 2015 U.S. TRANSGENDER SURVEY* 112, 114 (2016), <https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>.

respondents who had attempted suicide, 34% made their first attempt at age 13 or younger; 39% reported a first attempt between ages 14 and 17.⁴⁰

Other studies show that these disparities also exist for LGBT youth. In an analysis of data collected through the Youth Risk Behavior Surveillance survey (YRBS) in 2021, the CDC found that when compared to heterosexual students, LGBTQ+ students were more likely to report feeling sad or hopeless (69% vs. 35%); having seriously considered attempting suicide (45% vs. 15%); and having made a suicide attempt that required medical treatment (7% vs. 1%) in the past year.⁴¹ The findings are consistent with similar disparities documented in YRBS data from prior years.⁴² In a separate analysis of the experiences of transgender youth, the CDC found that 43.9% of transgender students considered attempting suicide, with 16.5% actually attempting suicide, within the past twelve months.⁴³ Another study found that gender minority youth in California experienced statistically similar rates of lifetime suicidal thoughts compared to their gender-conforming peers, but were much more likely to report suffering severe psychological distress in the past year (17% vs. 7%).⁴⁴

Research has also documented higher rates of substance use among LGBTQ people. Substance use is often viewed as a stress-coping response and may be related to experiences of stigma and discrimination.⁴⁵ A series of reports produced by the Williams Institute examined state-level disparities in substance use between LGBT and non-LGBT people using BRFSS data. Across these reports, focused on states that lack supportive policies for LGBT people, we found that LGBT people reported smoking, binge drinking, and heavy drinking at similar or higher rates than non-LGBT people.⁴⁶ Research has documented similar disparities for LGBT youth. For example, one study found that transgender youth were at increased odds of having consumed

⁴⁰ *Id.* at 115.

⁴¹ U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, YOUTH RISK BEHAVIOR SURVEY: DATA SUMMARY & TRENDS REPORT, 2011-2021 (2022), https://www.cdc.gov/healthyyouth/data/yrbs/pdf/YRBS_Data-Summary-Trends_Report2023_508.pdf.

⁴² See, e.g., J. Michael Underwood et al., *Youth Risk Behavior Surveillance – United States, 2019*, 69 MORBIDITY & MORTALITY WKLY. REP. 23 (2020), <https://www.cdc.gov/healthyyouth/data/yrbs/pdf/2019/su6901-H.pdf>.

⁴³ Michelle M. Johns et al., U.S. Ctrs. for Disease Control & Prevention, *Transgender Identity and Experiences of Violence Victimization, Substance Use, Suicide Risk, and Sexual Risk Behaviors among High School Students in 19 States and Large Urban School Districts, 2017*, 68 MORBIDITY & MORTALITY WKLY. REP. 67, 69 (2019), <https://www.cdc.gov/mmwr/volumes/68/wr/mm6803a3.htm> [hereinafter: Johns et al., *Transgender Identity*].

⁴⁴ Bianca D.M. WILSON ET AL., WILLIAMS INST., CHARACTERISTICS OF GENDER NONCONFORMING ADOLESCENTS IN CALIFORNIA 2-3 (2017), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/GNC-Youth-CA-Dec-2017.pdf>.

⁴⁵ See, e.g., Richard T. Liu & Lauren B. Alloy, *Stress Generation in Depression: A Systemic Review of the Empirical Literature and Recommendations for Future Study*, 30 CLIN. PSYCH. REV. 582 (2010); Jon. D. Kassel, Laura R. Stroud & Carol A. Paronis, *Smoking, Stress, and Negative Affect: Correlation, Causation, and Context Across States of Smoking*, 129 PSYCHOL. BULLETIN 129 (2003); Kathleen T. Brady & Susan C. Sonne, *The Role of Stress in Alcohol Use, Alcoholism Treatment, and Relapse*, 23 ALCOHOL RESEARCH & HEALTH 263 (1999).

⁴⁶ Williams Institute state reports are available at <https://williamsinstitute.law.ucla.edu/publications/?issues=discrimination-violence>.

alcohol, cigarettes, marijuana, or non-marijuana illicit drugs over the past twelve months as compared to cisgender youth.⁴⁷

Healthcare Discrimination

Research shows that LGBTQ people report various challenges in attempting to access healthcare across the life course as compared to their non-LGBT peers, including direct experiences with discrimination by healthcare providers.⁴⁸ For example, a study of healthcare access in California based on data from the California Health Interview Survey found that “gay men, lesbian women, and bisexual women were more likely than straight men and women to report experiencing unfair treatment when getting healthcare.”⁴⁹ Over 40% of lesbian women (44%) and bisexual women (45%) and about one-third of gay men (32%) reported being treated unfairly when receiving healthcare at some point in their lives.⁵⁰ These findings are consistent with results from national surveys. For example, one survey found that 56% of lesbian, gay, and bisexual respondents and 70% of transgender respondents reported experiencing at least one form of healthcare discrimination at some point in their lives.⁵¹ A separate nationally representative survey by the Center for American Progress (the “CAP Study”) found that 8% of lesbian, gay, and bisexual people and 29% of transgender people reported being refused care entirely in the preceding twelve months because of their sexual orientation or gender identity.⁵² Among transgender patients, 12% were specifically refused care related to gender transition in the prior year.⁵³

Similarly, several studies utilizing data collected through the National Health Interview Survey have shown higher incidence of other barriers to accessing healthcare among LGB people

⁴⁷ Sari L. Reisner et al., *Gender Minority Social Stress in Adolescence: Disparities in Adolescent Bullying and Substance Use by Gender Identity*, 52 J. SEX RES. 243, 249 (2015), <https://www.tandfonline.com/doi/full/10.1080/00224499.2014.886321>.

⁴⁸ See generally SOON KYU CHOI & ILAN H. MEYER, WILLIAMS INST., *LGBT AGING: A REVIEW OF RESEARCH FINDINGS, NEEDS, AND POLICY IMPLICATIONS* (2016), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Aging-Aug-2016.pdf>; David M. Frost, Keren Lehavot & Ilan H. Meyer, *Minority Stress and Physical Health Among Sexual Minority Individuals*, 38 J. BEHAV. MED. 1, 1 (2015), <https://doi.org/10.1007/s10865-013-9523-8>; ILAN H. MEYER & DAVID M. FROST, WILLIAMS INST., *MINORITY STRESS AND THE HEALTH OF SEXUAL MINORITIES* (2013), <https://williamsinstitute.law.ucla.edu/publications/minority-stress-health-sm/>; SUSAN H. BABEY ET AL., *GAPS IN HEALTHCARE ACCESS AND HEALTH INSURANCE AMONG LGBT POPULATIONS IN CALIFORNIA* (2022), <https://williamsinstitute.law.ucla.edu/publications/gaps-health-care-lgbt-ca/>.

⁴⁹ BABEY ET AL., *supra* note 48.

⁵⁰ *Id.*

⁵¹ LAMBDA LEGAL, *WHEN HEALTHCARE ISN'T CARING* 5 (2010), https://www.lambdalegal.org/sites/default/files/publications/downloads/whcic-report_when-health-care-isnt-caring.pdf.

⁵² Shabab Ahmed Mirza & Caitlin Rooney, *Discrimination Prevents LGBTQ People from Accessing Healthcare*, *CTR. FOR AM. PROGRESS* (Jan. 18, 2018), <https://www.americanprogress.org/article/discrimination-prevents-lgbtq-people-accessing-health-care/>.

⁵³ Mirza & Rooney, *supra* note 52.

compared to non-LGB people including costs, trouble finding a provider, not having a regular provider, and other obstacles.⁵⁴

Transgender people may encounter unique challenges related to healthcare access beyond those reported by cisgender LGB people. For example, HHS summarized comments it received during rulemaking in 2020 by noting that:

providers . . . used excessive precautions, avoided touching the patient, engaged in unnecessary physical roughness in pelvic examinations, made insensitive jokes, intentionally concealed information about options for different treatments, asked unnecessarily personal questions, referred to transgender patients by pronouns and terms of address based on their biological sex [assigned at birth] rather than their gender identity, and/or disclosed a patient’s medical history without authorization.⁵⁵

Non-exhaustive anecdotal evidence also illustrates unique experiences of LGBT discrimination in healthcare:

- Clinicians may fail to provide appropriate cancer screenings and counseling based on misconceptions about a patient’s anatomy.⁵⁶ In one case, a transgender patient was not informed of his breast cancer diagnosis despite the provider reviewing the confirming test results, learning of the news only “accidentally” when the lab technician called to ask how he was doing with his diagnosis.⁵⁷
- A same-sex couple reported that a pediatrician refused to evaluate their six-day-old child because of the parents’ sexual orientation.⁵⁸
- Patients have likewise reported that hospital staff refused to provide them with HIV medication upon discovering they have sex with men.⁵⁹

⁵⁴ Williams Institute Scholars, Comment Letter on Review of the National Health Interview Survey (June 15, 2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Comment-NHIS-Jun-2020.pdf> (including citations to studies on LGB populations that have used data from the National Health Interview Survey).

⁵⁵ Nondiscrimination in Health and Health Education Programs or Activities, Delegation of Authority, 85 Fed. Reg. 37,160, at 37,191 (June 19, 2020).

⁵⁶ Joshua Sterling & Maurice M. Garcia, *Cancer Screening in The Transgender Population: A Review Of Current Guidelines, Best Practices, And a Proposed Care Model*, 9 TRANSLATIONAL ANDROLOGY & UROLOGY 2771 (2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7807311/>.

⁵⁷ Susan Donaldson James, *Trans Man Denied Cancer Treatment; Now Feds Say It's Illegal*, ABC NEWS (Aug. 07, 2012), <https://abcnews.go.com/Health/transgender-bias-now-banned-federal-law/story?id=16949817>.

⁵⁸ HUMAN RIGHTS WATCH, YOU DON’T WANT SECOND BEST: ANTI-LGBT DISCRIMINATION IN US HEALTHCARE 22–23 (2018), <https://www.hrw.org/report/2018/07/23/you-dont-want-second-best/anti-lgbt-discrimination-us-health-care>.

⁵⁹ Mirza & Rooney, *supra* note 52.

- In one case, paramedics and emergency room providers delayed treatment after discovering a passenger in a car crash was a transgender woman of color, leading to her death.⁶⁰
- A transgender teen who was admitted into hospital care for suicidal ideation and self-inflicted harm ultimately died by suicide after being repeatedly misgendered by hospital staff and ultimately discharged.⁶¹

Past experiences of discrimination have shown to result in hypervigilance and the expectation of negative regard from non-LGBT people,⁶² which may affect access to healthcare and the quality of care received. Among respondents to the Generations and TransPop studies, one-third of LGB people and almost two-thirds of transgender people reported worrying about being negatively judged in interactions with a healthcare provider.⁶³ Another study based on national, probability-based survey data found that 18% of LGBTQ people reported avoiding healthcare due to perceived discrimination.⁶⁴ In addition, 8% of all LGBT respondents in the CAP Study avoided or postponed needed medical care because of disrespect or discrimination from healthcare staff; that figure rose to 14% among those who had experienced discrimination on the basis of their sexual orientation or in the past year.⁶⁵ The reports of discrimination were not distributed equally among LGBT respondents, with 22% of transgender people surveyed reporting avoiding care within the past year because of discrimination.⁶⁶ Additionally, 23% of respondents to the 2015 U.S. Transgender Discrimination Survey (“USTS”)—the largest survey of transgender people in the U.S. to date—reported that they did not seek needed care because they feared mistreatment.⁶⁷

Being required to seek out alternative sources of care if denied access by one provider due to discrimination may be particularly challenging for LGBT people. In the CAP Study, 18% of LGBTQ people overall and 41% of those LGBTQ people living outside metropolitan areas ranked finding the same type of care at another location “very difficult” or “not possible.”⁶⁸

⁶⁰ SARAH MCBRIDE ET AL., CTR. FOR AM. PROGRESS, *WE THE PEOPLE: WHY CONGRESS AND U.S. STATES MUST PASS COMPREHENSIVE LGBT NONDISCRIMINATION PROTECTIONS* 14 (2014), <https://cdn.americanprogress.org/wp-content/uploads/2014/12/LGBT-WeThePeople-report-12.10.14.pdf>.

⁶¹ Mirza & Rooney, *supra* note. 52.

⁶² Ilan H. Meyer, *Prejudice, Social Stress, and Mental Health in Lesbian, Gay, and Bisexual Populations*, 129 PSYCH. BULL. 674, 681–682 (2003), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2072932/>.

⁶³ MEYER, WILSON & O’NEILL, *LGBTQ PEOPLE IN THE US: SELECT FINDINGS FROM THE GENERATIONS AND TRANSPop STUDIES*, *supra* note 14, at 27.

⁶⁴ Logan S. Casey et al., *Discrimination in the United States: Experiences of Lesbian, Gay, Bisexual, Transgender, and Queer Americans*, 54 HEALTH SERV. RES. 1454 (2019).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ JAMES ET AL., *supra* note 39 at 98.

⁶⁸ Mirza & Rooney, *supra* note 52.

B. LGBTQ People Experience High Rates of Economic Instability

Research also shows that LGBT people are more likely to experience economic instability than non-LGBT people. For example, a recent Williams Institute analysis of data collected through the Census Bureau’s Household Pulse Survey found that LGBT people are more likely to live in poverty than non-LGBT people. In 2021, 17% of LGBT people were living below the federal poverty level compared to 12% non-LGBT people.⁶⁹ Mirroring findings from earlier analyses, the study found that some subpopulations within the LGBT population were more likely to live in poverty than others. Approximately one-fifth of transgender and bisexual cisgender women were living in poverty, while gay and bisexual cisgender men had the lowest rates of poverty (approximately 10%).⁷⁰ LGBT parents were particularly likely to live in poverty, with one-quarter (26%) of LGBT people living in households with children (many of whom are parents) living in poverty compared to 16% of non-LGBT people living with children.⁷¹

Poverty rates also varied by race and LGBT identity. LGBT people of color were significantly more likely to experience poverty than white LGBT people. Poverty rates were particularly high for LGBT American Indian/Alaska Native Adults (32%), Black LGBT adults (29%), and multiracial adults (28%).⁷² By comparison, 13% of white LGBT adults were living in poverty. In addition, across most racialized groups, LGBT people experienced higher rates of poverty than their non-LGBT counterparts. A separate analysis of data collected through the Williams Institute’s Generations study similarly found that cisgender LBQ people were also more likely to live in low-income households (defined as less than 200% of the federal poverty level) compared to the general population.⁷³

Other Williams Institute research examining food insufficiency, another marker of economic insecurity, using Household Pulse Data found similar disparities between LGBT and non-LGBT people. In 2021, 13% of LGBT people reported experiencing food insufficiency—defined as sometimes or often not having enough food to eat in the past seven days—compared to 8% of non-LGBT people.⁷⁴ Similar to the findings on poverty, transgender people had higher rates of food insufficiency than cisgender people, and LGBT people of color had higher rates than white LGBT people.⁷⁵ LGBT people also reported higher rates of recent use of food resources,

⁶⁹ BIANCA D.M. WILSON, LAUREN J.A. BOUTON, M.V. LEE BADGETT & MORIAH MACKLIN, WILLIAMS INST., *LGBT POVERTY IN THE UNITED STATES: TRENDS AT THE ONSET OF COVID-19* 1 (2023).

⁷⁰ *Id.* at 7.

⁷¹ *Id.*

⁷² *Id.* at 9.

⁷³ MEYER, WILSON & O’NEILL, *LGBTQ PEOPLE IN THE US: SELECT FINDINGS FROM THE GENERATIONS AND TRANSPOP STUDIES*, *supra* note 14, at 10–11.

⁷⁴ KERITH J. CONRON, RUBEEN GUARDADO, KATHRYN K. O’NEILL & BIANCA D.M WILSON, WILLIAMS INST., *FOOD INSUFFICIENCY AMONG LGBT ADULTS DURING THE COVID-19 PANDEMIC 2* (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Food-Insufficiency-Apr-2022.pdf>.

⁷⁵ *Id.*

including food banks and SNAP, than non-LGBT people. Sixteen percent of LGBT people received benefits through SNAP in the prior week (37% of those who were income-eligible) compared to 12% of non-LGBT people (39% of those who were income-eligible).⁷⁶

Other Williams Institute research examined indicators of economic insecurity during the height of the COVID-19 pandemic and found that LGBT people were more likely to have difficulty paying bills and other household expenses and to lose their jobs compared to non-LGBT people. For example, about one-quarter (24%) of LGBT people reported that they were unable to afford basic household goods compared to 17% of non-LGBT people, and 20% of LGBT people had problems paying their rent or mortgage compared to 12% of non-LGBT people.⁷⁷ Another report found that half of transgender people (50%) were unable to afford household expenses during the pandemic compared to 32% of cisgender people.⁷⁸ An analysis of economic security focused on older adults also found that LGBT people age 50 and older were more likely to live in low-income households, have difficulty paying for basic expenses, and experience food insufficiency than older non-LGBT adults during the pandemic.⁷⁹

Other Williams Institute research indicates that LGBT people experience unique barriers to accessing services designed to support people living in poverty or with low incomes, including discrimination. For example, a qualitative analysis examining food insecurity and access to nutritional support among LGBT people in Los Angeles and Kern Counties documented several instances of LGBT people experiencing discrimination, or fearing discrimination, when seeking services.⁸⁰ These experiences occurred at range of service providers—including at food banks run by religious organizations and at local WIC and CalFresh offices.⁸¹ A separate analyses based on the same qualitative data found that experiences of discrimination in general (not necessarily related to service provision) contributed to poverty and economic security among LGBT people.⁸²

⁷⁶ *Id.* at 5.

⁷⁷ BRAD SEARS, KERITH J. CONRON & ANDREW R. FLORES, WILLIAMS INST., THE IMPACT OF THE FALL 2020 COVID-19 SURGE ON LGBT ADULTS IN THE US 3 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/COVID-LGBT-Fall-Surge-Feb-2021.pdf>.

⁷⁸ JODY L. HERMAN & KATHRYN K. O'NEILL, WILLIAMS INST., WELL-BEING AMONG TRANSGENDER PEOPLE DURING THE COVID-19 PANDEMIC 1 (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Pulse-Toplines-Nov-2022.pdf>.

⁷⁹ LAUREN J.A. BOUTON, AMANDA M. BRUSH & ILAN H. MEYER, WILLIAMS INST., LGBT ADULTS AGED 50 AND OLDER IN THE US (2023), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Older-Adults-Jan-2023.pdf>.

⁸⁰ BIANCA D.M. WILSON, M.V. LEE BADGETT & ALEXANDRA-GRISELLE H. GOMEZ, WILLIAMS INST., “WE’RE STILL HUNGRY”: LIVED EXPERIENCES WITH FOOD INSECURITY & FOOD PROGRAMS AMONG LGBTQ PEOPLE (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-Food-Bank-Jun-2020.pdf>.

⁸¹ *Id.*

⁸² BIANCA D.M. WILSON ET AL., WILLIAMS INST., PATHWAYS INTO POVERTY: LIVED EXPERIENCES AMONG LGBTQ PEOPLE (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Pathways-Overview-Sep-2020.pdf>.

C. LGBTQ People Often Face Housing Instability and Homelessness

Research has found that LGBT people—especially youth—are significantly overrepresented among those who are homeless or unstably housed.⁸³ A 2017 national study funded by the Department of Housing and Urban Development (HUD) estimated that LGBTQ youth make up over 20% of homeless youth⁸⁴—at least 2 times higher than their proportion of the youth population in the U.S.⁸⁵ Prior estimates of LGBTQ youth in various cities have similarly found high proportions of LGBTQ youth among the homeless youth population, ranging from 10–45%.⁸⁶ Further supporting these studies, the 2015 LGBTQ Homeless Youth Provider Survey found that, across 138 agencies, service providers estimated that LGBTQ youth accounted for an average of 29% of all homeless youth served, with transgender and genderqueer youth specifically accounting for approximately 4%.⁸⁷ High rates of homelessness are also observed in school-based samples of youth. For example, according to a recent study based on the California Healthy Kids Survey—a large sample of 895,000 middle- and high-school aged youth in California—3.5% of respondents reported being unstably housed, and more than a quarter (25.3%) of those who were unstably housed identified as LGBTQ.⁸⁸ Furthermore, several studies have found that LGBTQ youth reported being homeless for longer periods of time, on average, than their non-LGBTQ peers.⁸⁹

⁸³ ADAM P. ROMERO ET AL., WILLIAMS INST., LGBT PEOPLE AND HOUSING AFFORDABILITY, DISCRIMINATION, AND HOMELESSNESS 14 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Housing-Apr-2020.pdf>.

⁸⁴ *See id.* *See also* AMY DWORSKY, MOLLY VAN DRUNEN & ELISSA GITLOW, CHAPIN HALL AT THE UNIV. OF CHI., VOICES OF YOUTH COUNT (VOYC) YOUTH COUNT AND BRIEF YOUTH SURVEY: TECHNICAL REPORT (2017).

⁸⁵ CONRON, *supra* note 3.

⁸⁶ MARY CUNNINGHAM ET AL., URBAN INST., HOMELESS LGBT YOUTH (2014), <https://www.urban.org/sites/default/files/publication/22876/413209-Homeless-LGBTQ-Youth.PDF>; LANCE FREEMAN & DARRICK HAMILTON, EMPIRE STATE COAL. OF YOUTH & FAMILY SERVS., EMPIRE STATE COALITION OF YOUTH AND FAMILY SERVICES: A COUNT OF HOMELESS YOUTH IN NEW YORK CITY (2008), http://www.citylimits.org/images_pdfs/pdfs/HomelessYouth.pdf; Les B. Whitbeck et al., *Mental Disorder, Subsistence Strategies, and Victimization among Gay, Lesbian, and Bisexual Homeless and Runaway Adolescents*, 41 J. SEX RES. 329 (2004), <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1058&context=sociologyfacpub>.

⁸⁷ SOON KYU CHOI ET AL., WILLIAMS INST., SERVING OUR YOUTH 2015: THE NEEDS AND EXPERIENCES OF LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUESTIONING YOUTH EXPERIENCING HOMELESSNESS (2015), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Serving-Our-Youth-June-2015.pdf>. *See also* LAURA E. DURSO & GARY J. GATES, WILLIAMS INST. WITH TRUE COLORS FUND AND THE PALETTE FUND, SERVING OUR YOUTH: FINDINGS FROM A NATIONAL SURVEY OF SERVICE PROVIDERS WORKING WITH LESBIAN, GAY, BISEXUAL AND TRANSGENDER YOUTH WHO ARE HOMELESS OR AT RISK OF BECOMING HOMELESS (2012), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Durso-Gates-LGBT-Homeless-Youth-Survey-July-2012.pdf>.

⁸⁸ LAURA BAAMS ET AL., LGBTQ YOUTH IN UNSTABLE HOUSING AND FOSTER CARE, 143 PEDIATRICS e20174211 (2017), <https://pediatrics.aappublications.org/content/pediatrics/143/3/e20174211.full.pdf>. Generally consistent with the literature on youth, we use “LGBTQ”—with the Q representing questioning or queer youth—to capture those youth whose identities are less developed or more fluid. *See generally*, BIANCA D.M. WILSON ET AL., WILLIAMS INST., SEXUAL AND GENDER MINORITY YOUTH IN FOSTER CARE: ASSESSING DISPROPORTIONALITY AND DISPARITIES IN LOS ANGELES (2014). Certainly, adults question their sexual orientation or gender identity and identify as queer; however, few studies relevant to this discussion address housing among adults who specifically identify as queer or questioning; hence, we generally use “LGBT” when discussing adults.

⁸⁹ *See, e.g., id.*; FREEMAN & HAMILTON, *supra* note 86.

Research shows that these disparities appear to continue into young adulthood and beyond where population-based studies of households demonstrate disproportionate rates of reported homelessness among LGBT adults. For example, a 2020 population-based study in the U.S. found that 17% of LGB adults reported experiencing homelessness at some point in their life⁹⁰ (compared to a general population estimate of 6%).⁹¹ Similarly, another nationally representative sample of adults ages 18–25 found that LGBT people reported experiencing homelessness in the prior year at a rate two times higher than the rate among non-LGBT young adults.⁹² With respect to gender minorities specifically, in a recent nationally representative sample, 8% of transgender adults reported experiences of homelessness (including living temporarily with friends or family, in a shelter or group home, or in a place not intended for housing such as on the street or in a car, park, or abandoned building) in the year prior to the survey, compared to only 1% of cisgender, heterosexual adults.⁹³ Additionally, 30% of transgender adults in this same survey reported having moved two or more times in the two years prior, compared to only 11% of cisgender adults.⁹⁴ Similarly, among respondents to the 2015 USTS, 30% reported having experienced homelessness at some point in their lives, with 12% having had such an experience within the past year.⁹⁵ In the USTS, transgender women of color reported the highest rates of lifetime experiences with homelessness, including 59% among American Indian women, 51% among Black women, and 49% among Middle Eastern women.⁹⁶

Federal government data sources provide additional information about homelessness among transgender and non-binary people. HUD’s 2022 point-in-time estimate of homelessness indicated that over 6,000 gender minority (transgender, non-binary, and questioning) youth and adults were currently experiencing homelessness.⁹⁷ Gender minority people were disproportionately unsheltered compared to cisgender people—63% of gender minority people who were experiencing homelessness were unsheltered.⁹⁸ In addition, 4% of young people

⁹⁰ BIANCA D.M. WILSON ET AL., WILLIAMS INST., HOMELESSNESS AMONG LGBT ADULTS IN THE U.S. (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Homelessness-May-2020.pdf>.

⁹¹ Vincent A. Fusaro, Helen G. Levy & H. Luke Shaefer, *Racial and Ethnic Disparities in the Lifetime Prevalence of Homelessness in the United States*, 55 DEMOGRAPHY 2119 (2018), <https://doi.org/10.1007/s13524-018-0717-0>.

⁹² Matthew H. Morton et al., *Prevalence and Correlates of Youth Homelessness in the United States*, 62 J. ADOLESCENT HEALTH 14 (2018), doi:10.1016/j.jadohealth.2017.10.006; M.H. MORTON ET AL., CHAPIN HALL AT THE UNIV. OF CHI., MISSED OPPORTUNITIES: LGBTQ YOUTH HOMELESSNESS IN AMERICA (2018), <https://voicesofyouthcount.org/wp-content/uploads/2018/05/VoYC-LGBTQ-Brief-Chapin-Hall-2018.pdf>.

⁹³ See WILSON ET AL., *supra* note 90.

⁹⁴ Ilan H. Meyer et al., Findings from a U.S. Transgender Population Study, Presentation at the United States Professional Association for Transgender Health Conference (Sept. 2019) (on file with authors).

⁹⁵ JAMES ET AL., *supra* note 39 at 176 (2016).

⁹⁶ See *id.* at 178.

⁹⁷ TANYA DE SOUSA ET AL., OFFICE OF COMMUNITY PLANNING & DEV., U.S. DEP’T OF HOUSING & URBAN DEV., THE 2022 ANNUAL HOMELESSNESS ASSESSMENT REPORT (AHAR) TO CONGRESS 12 (2022), <https://www.huduser.gov/portal/sites/default/files/pdf/2022-AHAR-Part-1.pdf>.

⁹⁸ *Id.* at 14.

(under age 25) experiencing homelessness identified as gender minorities.⁹⁹ The report also noted significant increases in the number of gender minority people experiencing homelessness compared to prior reports. The number of gender minority people experiencing sheltered homelessness increased by 93% between 2020 and 2022, and the number of gender minority people experiencing unsheltered homelessness increased by 60% among non-binary people and 14% among transgender people during the same period.¹⁰⁰ These findings reflect other research that has found similar increases in homelessness among transgender populations over the past few years.¹⁰¹

Discrimination contributes to disproportionate rates of homelessness and housing instability among LGBT people, particularly transgender people. A 2020 literature review by the Williams Institute summarized a large body of research in this area.¹⁰² The review pointed to studies finding that LGBT people experienced various forms of discrimination and harassment across a range of settings related to housing—from shelter services, to apartment rentals, to assisted living or long-term care, to mortgage lending. Much of the research in this area has focused specifically on challenges that LGBT people face in seeking access to shelters and other services for people experiencing homelessness. For example, a Williams Institute analysis of data collected through the 2015 USTS found that nearly 30% of transgender respondents who had experienced homelessness in the prior year and sought shelter were denied access because of their gender identity.¹⁰³ Approximately 44% reported mistreatment at a shelter, including harassment, assault, or requirements to dress or present as the wrong gender.¹⁰⁴ Among all transgender people who had experienced homelessness due to their gender identity in the prior year, one quarter (26%) did not seek shelter because they feared they would be mistreated as a transgender person.¹⁰⁵ In other studies, LGBT youth reported being bullied, harassed, and assaulted in shelters, with staff either remaining unresponsive or pushing them through isolation.¹⁰⁶

⁹⁹ *Id.* at 49.

¹⁰⁰ *Id.* at 15. The report noted that these estimates should be viewed with caution due to a change in the methodology for collecting data on gender identity between 2020 and 2022.

¹⁰¹ See NAT'L ALL. TO END HOMELESSNESS, TRANSGENDER HOMELESS ADULTS & UNSHELTERED HOMELESSNESS: WHAT THE DATA TELL US (2020), <https://endhomelessness.org/wp-content/uploads/2020/07/Trans-Homelessness-Brief-July-2020.pdf>.

¹⁰² ROMERO ET AL., *supra* note 83.

¹⁰³ KATHRYN K. O'NEILL, BIANCA D.M WILSON & JODY L. HERMAN, WILLIAMS INST., HOMELESSNESS AMONG TRANSGENDER ADULTS: FINDINGS FROM THE 2015 US TRANSGENDER SURVEY 2 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Homeless-Shelter-Nov-2011.pdf>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ ROMERO ET AL., *supra* note 83.

D. Many LGBTQ People Experience Intimate Partner Violence

Research shows that many LGBTQ people experience violence within intimate relationships. For example, reports on intimate partner violence (IPV) against LGBTQ people and people living with HIV conducted by the National Coalition of Anti-Violence Programs (NCAVP) documented over 6,000 incidents of IPV over a three-year period (2015–2017).¹⁰⁷ These reports are based on data collected by local member organizations across the nation that provide programs and services for survivors. While these data do not represent the total number of incidents of IPV against LGBTQ people over this time period, the reports illustrate the impact of such violence on LGBTQ communities. The most recent NCAVP report, released in 2017, collected information about 2,144 incidents of IPV against LGBTQ survivors and survivors living with HIV.¹⁰⁸ Fourteen local NCAVP member organizations in 11 states provided these accounts.¹⁰⁹ Of all survivors, 45% were cisgender men, 35% were cisgender women, 11% were transgender women, 4% were transgender men, and the remaining 5% were other gender identities.¹¹⁰ The majority (59%) of survivors were people of color, including 21% who were Black and 27% who were Latino/a.¹¹¹ The most common types of violence reported by survivors were verbal harassment (19%), physical violence (16%), and threats or intimidation (11%).¹¹² Transgender women were nearly 2.5 times more likely to experience IPV that included sexual violence than other LGBTQ survivors.¹¹³ Nearly half (48%) of survivors reported being injured as a result of the violence they experienced and 45% sought medical attention.¹¹⁴

In addition to the NCAVP reports, a number of other studies have documented IPV against LGBTQ people over the past decade. Many of these studies show that LGBTQ people are at elevated risk of IPV compared to non-LGBTQ people, and reveal particular vulnerability among marginalized communities within the LGBTQ population, including bisexual women, transgender women, and LGBTQ youth. For example, the 2010 National Center for Injury Prevention and Control study—based on data from the National Intimate Partner and Sexual Violence Survey—indicated that bisexual men and women were more likely to experience IPV in their lifetimes than men or women of other sexual orientations.¹¹⁵ Sixty-one percent of bisexual women and 37.3% of bisexual men experienced IPV, including rape, physical violence, and/or

¹⁰⁷ See generally NYC ANTI-VIOLENCE PROJECT, <https://avp.org/reports/> (last visited July 24, 2023).

¹⁰⁸ BEVERLY TILLERY ET AL., NAT’L COAL. OF ANTI-VIOLENCE PROGRAMS, LESBIAN GAY, BISEXUAL, TRANSGENDER, QUEER AND HIV-AFFECTED HATE AND INTIMATE PARTNER VIOLENCE IN 2017 6 (2018), <http://avp.org/wp-content/uploads/2019/01/NCAVP-HV-IPV-2017-report.pdf>.

¹⁰⁹ *Id.* at 33.

¹¹⁰ *Id.* at 31.

¹¹¹ *Id.* at 32.

¹¹² *Id.* at 18.

¹¹³ *Id.* at 17.

¹¹⁴ *Id.* at 20.

¹¹⁵ NAT’L CTR. FOR INJURY PREVENTION & CONTROL, U.S. CTRS. FOR DISEASE CONTROL & PREVENTION, NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 FINDINGS ON VICTIMIZATION BY SEXUAL ORIENTATION 2 (2014), https://www.acesdv.org/wp-content/uploads/2014/06/NISVS_FactSheet_LBG-a.pdf.

stalking by an intimate partner, compared to 43.8% of lesbian women, 26.0% of gay men, 35.0% of heterosexual women, and 29.0% of heterosexual men.¹¹⁶ Rates of IPV involving severe physical violence were also higher among bisexual women (49.3%) compared to lesbian (29.4%) and heterosexual (23.6%) women.¹¹⁷ Many survivors of IPV reported that the experience had negative impacts on their lives, including necessitating missing work or school, causing them to be fearful, and triggering post-traumatic stress symptoms.¹¹⁸ Similarly, analyses of data collected in California and Massachusetts found that bisexual women were at increased risk of intimate partner violence.¹¹⁹

Several studies focused on the experiences of transgender people have found particularly high rates of intimate partner violence. For example, the 2015 USTS found that more than half (54%) of transgender respondents experienced some form of IPV.¹²⁰ Over 40% of respondents (42%) reported experiencing at least one type of physical IPV and 24% reported severe physical violence by an intimate partner.¹²¹ In addition, about one-third (34%) of respondents who had been sexually assaulted in their lives (47%) said that they were assaulted by a current or former partner.¹²² Similarly, a 2018 study based on a survey of young transgender women in Chicago and Boston found that 42% had experienced IPV in their lifetime.¹²³

Analyses of data collected through the Youth Risk Factor Survey (YRBS) suggest that LGBTQ youth are also at increased risk of IPV. An analysis of data from the nationwide 2021 YRBS found that LGB high school students were more likely to experience IPV than heterosexual students: 26% of bisexual students and 17% of gay and lesbian students reported experiencing physical or sexual violence within a dating relationship in the prior year compared to 10% of heterosexual students.¹²⁴ Similarly, an analysis of YRBS data collected in 2017 from 19 states and localities found that 26.4% of transgender students had experienced physical dating violence and 22.9% had experienced sexual dating violence.¹²⁵ Cisgender male and female students were less likely to have experienced both types of IPV: 8.7% of cisgender female and 5.8% of cisgender male students had experienced physical dating violence; and 12% of cisgender female and 3.5% of cisgender male students had experienced sexual dating violence.¹²⁶

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ Kerith J. Conron et al., *A Population-Based Study of Sexual Orientation and Identity and Gender Differences in Adult Health*, 100 AM. J. PUB. HEALTH 1953 (2010); Naomi G. Goldberg & Ilan H. Meyer, *Sexual Orientation Disparities in History of Intimate Partner Violence: Results from the California Health Interview Survey*, 28 J. INTERPERSONAL VIOLENCE 1109 (2013).

¹²⁰ JAMES ET AL., *supra* note 39, at 207.

¹²¹ *Id.* at 208.

¹²² *Id.* at 205–06.

¹²³ Rachel C. Garthe et al., *Prevalence and Risk Correlates of Intimate Partner Violence Among a Multisite Cohort of Young Transgender Women*, 5 LGBT HEALTH 333, 337 (2018).

¹²⁴ Underwood et al., *supra* note 42, at 22.

¹²⁵ Johns et al., *Transgender Identity*, *supra* note 43.

¹²⁶ *Id.*

Discrimination, and fear of discrimination, by service providers can create barriers to IPV survivors accessing the services they need. The 2017 NCAVP report found that 43% of LGBTQ IPV survivors and survivors living with HIV who sought shelter services reported that they were turned away.¹²⁷ Nearly one-third (32%) of those who were denied services reported that they were turned away because of their gender identity.¹²⁸ A 2015 analysis of data collected through the 2010 National Transgender Discrimination Survey found that 5.8% of transgender respondents who tried to access IPV services and 4.8% of those who tried to access a rape crisis center experienced discrimination.¹²⁹ Transgender people of color and those with disabilities were more likely to experience unequal treatment when accessing IPV services than white and non-disabled transgender respondents.¹³⁰

In addition, LGBTQ people may be reluctant to seek out services because they fear discrimination or substandard care by healthcare and other service providers. Scholars have also found that LGBTQ people may perceive service providers as unwelcoming toward LGBTQ survivors, unable to provide competent care to LGBTQ survivors, and only available to support heterosexual, cisgender women.¹³¹

E. A Substantial Number of LGBTQ Refugees Reside in the US

Williams Institute research indicates that a substantial number of LGBT people seek refuge in the U.S. and many are fleeing their home countries due to discrimination and violence related to their LGBT status. An analysis of data from the USCIS Asylum Pre-Screening System found that 11,400 applications for asylum were filed by LGBT people between 2012 and 2017.¹³² Of these applications, 3,899 were related to LGBT status.¹³³ In addition, an estimated 4,385 asylum claims filed between 2007 and 2017 that led to fear interviews by asylum officers were related to LGBT status.¹³⁴ The vast majority of these 4,385 claims—98%—were deemed credible by asylum officers, meaning that LGBT asylum seekers who faced persecution or torture based on

¹²⁷ TILLERY ET AL., *supra* note 108108, at 8.

¹²⁸ *Id.*

¹²⁹ Kristie L. Seelman, *Unequal Treatment of Transgender Individuals in Domestic Violence and Rape Crisis Programs*, 59 SW PUBLICATIONS 1, 20 (2015).

¹³⁰ *Id.* at 21.

¹³¹ *See, e.g.*, TAYLOR N.T. BROWN & JODY L. HERMAN, WILLIAMS INST., INTIMATE PARTNER VIOLENCE AND SEXUAL ABUSE AMONG LGBT PEOPLE: A REVIEW OF EXISTING RESEARCH (2015), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/IPV-Sexual-Abuse-Among-LGBT-Nov-2015.pdf>. *See generally* JAMES ET AL., *supra* note 39.

¹³² ARI SHAW ET AL., WILLIAMS INST., LGBT ASYLUM CLAIMS IN THE US 1 (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Asylum-LGBT-Claims-Mar-2021.pdf>.

¹³³ *Id.*

¹³⁴ *Id.*

their LGBT status almost always met this threshold asylum requirement.¹³⁵ These data suggest that there is a considerable population of LGBT refugees in the U.S.

Other studies indicate that LGBT refugees experience discrimination, harassment, and other unique challenges related to their LGBT status as they arrive and resettle in their new countries. A Williams Institute review of relevant scholarship noted that “conditions in detention centers can be particularly difficult for LGBTQI+ migrants, who are often placed in jails or jail-like facilities and experience negative health consequences, including sexual and physical abuse.”¹³⁶ One study focused on the experiences of LGBT detainees, based on ICE data from 2008-2013, found that detainees were subjected to “sexual assault by guards and fellow detainees, withholding of medical treatment, verbal and physical abuse by guards and fellow detainees, the use of solitary confinement based solely on the sexual orientation or gender identity of the immigrant, incidents of LGBT immigrants being humiliated by guards in front of other detainees, and inappropriate use of restraints.”¹³⁷ Other research has found that transgender and non-binary migrants have faced additional challenges related to their gender identity, including being denied access to needed medical care, housed according to their sex assigned at birth resulting in harassment and other forms of mistreatment, and being held in for significantly longer periods than cisgender detainees¹³⁸

Research has also found that many LGBT refugees continue to experience discrimination and exclusion once they resettle in new communities. For example, studies have found that LGBT migrants face challenges in securing jobs and housing, experience homophobia and racism, and feel “excluded from co-ethnic communities as well as general society.”¹³⁹ These enduring obstacles may prevent LGBT migrants from receiving or seeking out services designed to support refugees and ease their transition into living in the U.S.¹⁴⁰

¹³⁵ *Id.*; Questions & Answers: Credible Fear Screening, U.S. Citizenship & Immigration Scvs., <https://www.uscis.gov/humanitarian/refugees-and-asylum/asylum/questions-and-answers-credible-fear-screening> (last visited Aug. 3, 2023).

¹³⁶ ARI SHAW & NAMRATA VERGHESE, WILLIAMS INST., LGBTQI+ REFUGEES AND ASYLUM SEEKERS: A REVIEW OF RESEARCH AND DATA NEEDS 25 (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQI-Refugee-Review-Jul-2022.pdf> (internal citations omitted).

¹³⁷ SHARITA GRUBERG, CTR. FOR AM. PROG., LGBT IMMIGRANTS IN U.S. IMMIGRATION DETENTION 5 (2013), <https://cdn.americanprogress.org/wp-content/uploads/2013/11/ImmigrationEnforcement.pdf>.

¹³⁸ SHAW & VERGHESE, *supra* note 136; Elizabeth Kvach et al., The Disproportionate Harm of Immigration Detention for Transgender and Nonbinary People Requires an End to the Use of Confinement (2022) (on file with authors).

¹³⁹ Jana Golombek et al., *Experiences of Minority Stress and Mental Health Burdens of Newly Arrived LGBTQ* Refugees in Germany*, 18 J. SEX. RES. & SOC. POLICY 1049 (2021).

¹⁴⁰ See, e.g., Lauren Munro et al., *A Bed of Roses?: Exploring the Experiences of LGBT Newcomer Youth Who Migrate to Toronto*, in LGBTQI ASYLUM SEEKERS AND REFUGEES FROM A LEGAL AND POLITICAL PERSPECTIVE (Arzu Guler, Maryna Shevtsova & Denise Ventury, eds.) (2013).

F. LGBTQ Students and Employees Experience Discrimination, Including in the Healthcare Field

Existing research suggests that LGBTQ people are well-represented among students in higher education and graduate school generally, and within the healthcare field. Williams Institute estimates of the LGBT population by age indicate that over 15% of adults ages 18-to-24 identify as LGBT—or approximately 4.7 million adults.¹⁴¹ Many of these young adults are likely to be enrolled in higher education programs. A separate Williams Institute analysis of data collected through the Access to Higher Education Survey (AHES) found that nearly 60% of LGBTQ adults ages 18-to-40 have attended a four-year college at some point in their lives and older have and about one in ten had attended graduate school.¹⁴² Additionally, data from the 2022 American Medical School Graduation Questionnaire, conducted by the American Association of Medical Colleges, indicate that 11.6% of recent medical school graduates are sexual minorities and 1.1% are transgender.¹⁴³

Research also indicates that LGBTQ students face unique challenges related to their sexual orientation and gender identity across all levels of higher education. Survey data on students' experiences come from a wide range of sources, including academic research, campus climate surveys, and surveys by non-governmental organizations. Williams Institute analyses of data collected through the AHES shed light on the experiences of LGBTQ people in four-year colleges, graduate schools, and community colleges.¹⁴⁴ Additional analyses based on this data set focused on transgender people¹⁴⁵ and LGBTQ people of color¹⁴⁶ in higher education.

In four-year colleges, Williams Institute research found that nearly one-third of LGBTQ people (32.6%) experienced bullying, harassment, or assault at college, compared to 18.9% of non-LGBTQ people.¹⁴⁷ More specifically, nearly one in five (19.1%) LGBTQ people reported

¹⁴¹ Kerith J. Conron et al., Williams Inst., *How Many LGBT People Are There?: Population Trends and Change in the Demographic Profile of LGBT Adults* (forthcoming) (on file with authors).

¹⁴² KATHRYN K. O'NEILL ET AL., WILLIAMS INST., *EXPERIENCES OF LGBTQ PEOPLE IN FOUR-YEAR COLLEGES AND GRADUATE PROGRAMS* 2, 5 (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-College-Grad-School-May-2022.pdf>.

¹⁴³ Data available at American Assoc. of Med. Colleges, *Graduation Questionnaire (GQ)*, <https://www.aamc.org/data-reports/students-residents/report/graduation-questionnaire-gq> (last visited Aug. 3, 2023).

¹⁴⁴ O'NEILL ET AL., *supra* note 142; Kerith J. Conron, Kathryn K. O'Neill & Michelle A. Marzullo, *Community Colleges and the Experiences of LGBT People* (2022), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-Community-College-May-2022.pdf>.

¹⁴⁵ KERITH J. CONRON KATHRYN K. O'NEILL & LUIS L. VASQUEZ, WILLIAMS INST., *EDUCATIONAL EXPERIENCES OF TRANSGENDER PEOPLE: FINDINGS FROM A NATIONAL PROBABILITY SURVEY* (2022); ABBIE E. GOLDBERG, WILLIAMS INST., *TRANSGENDER STUDENTS IN HIGHER EDUCATION* 6 (2018), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Trans-Higher-Ed-Aug-2018.pdf>.

¹⁴⁶ KERITH J. CONRON, KATHRYN O'NEILL, MARIELLA ARREDONDO & RUBEEN GUARDADO, WILLIAMS INST., *EDUCATIONAL EXPERIENCES OF LGBTQ PEOPLE OF COLOR: FINDINGS FROM A NATIONAL PROBABILITY SURVEY* (2023), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/BIPOC-Higher-Ed-Feb-2023.pdf>.

¹⁴⁷ O'NEILL ET AL., *supra* note 142, at 2.

experiencing in-person bullying or harassment, and 12.5% of LGBTQ people experienced online or other indirect bullying or harassment while at a four-year college.¹⁴⁸ Other students were the most frequently identified perpetrators of bullying and harassment of LGBTQ and non-LGBTQ people. LGBTQ people who had attended four-year colleges were also about twice as likely to report “covering” behaviors, including their dress, appearance, or mannerisms to avoid discrimination, as their non-LGBTQ peers (15.7% and 7.0%, respectively).¹⁴⁹

In graduate school, LGBTQ people were more than twice as likely to report unfair treatment by faculty, staff, or school administrators, compared to non-LGBTQ people (33.8% and 14.8%, respectively).¹⁵⁰ Almost a third (31.0%) of LGBTQ people reported unfair treatment by faculty, compared to 14.8% of non-LGBTQ people.¹⁵¹ LGBTQ people were also more likely to report unfair treatment by staff (17.3% vs. 3.5%) and by school administrators (13.8% vs. 3.5%) in graduate programs, compared to non-LGBTQ people.¹⁵² About a quarter (25.7%) of LGBTQ people reported hearing slurs or negative comments about LGBTQ people at their school.¹⁵³ And, more than one in ten (11.6%) LGBTQ people changed their dress, appearance, or mannerisms to avoid discrimination at graduate school— far more than their non-LGBTQ peers (1.5%).¹⁵⁴

LGBTQ students in four-year colleges and graduate schools also reported higher rates of sexual violence and harassment than non-LGBTQ students. For example, the Williams Institute analysis of AHES data found that LGBTQ people who had attended four-year institutions were more likely than non-LGBTQ students to be sexually harassed (17.6% to 5.8%) or experience sexual assault (11.8% v. 2.0%).¹⁵⁵ Similar disparities have been documented in earlier studies. The 2017 Campus Climate Survey by Association of American Universities (“AAU”) found that roughly two thirds of lesbian/gay or bisexual students (60% and 69%, respectively) had experienced sexual harassment, intimate partner violence, or stalking while in college or graduate school, as compared to less than half (46%) of heterosexual students.¹⁵⁶ These figures were even higher for transgender, genderqueer, and gender non-conforming students, with three-quarters (75%) experiencing sexual harassment, intimate partner violence, or stalking as an undergraduate student and over two-thirds (69%) experiencing sexual harassment as a graduate student.¹⁵⁷ The 2019 Association of American Universities Campus Climate Survey on Sexual Assault and

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 26.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.* at 27.

¹⁵⁴ *Id.* at 25.

¹⁵⁵ *Id.* at 3.

¹⁵⁶ DAVID CANTOR ET AL., REPORT ON THE AAU CAMPUS CLIMATE SURVEY ON SEXUAL ASSAULT AND SEXUAL MISCONDUCT 104 (2017), <https://www.aau.edu/sites/default/files/AAU-Files/Key-Issues/Campus-Safety/AAU-Campus-Climate-Survey-FINAL-10-20-17.pdf>.

¹⁵⁷ *Id.*

Misconduct also found that LGBTQ undergraduate and graduate/professional students were more likely than non-LGBTQ students to report experiencing non-consensual sexual contact, involving physical force or inability to consent.¹⁵⁸ Roughly one in ten heterosexual students reported such experiences (11.5%), as compared to one one-quarter of bisexual students (25.6%); one-fifth of those selecting more than one sexual orientation category (22.2%) or identifying as asexual, queer, questioning, or unlisted (18.5%); and fifteen percent (15.1%) of gay or lesbian students.¹⁵⁹ Gender minority students reported similar rates to those of cisgender women (22.8% v. 25.9% for undergraduate students and 14.5% v. 9.7% for graduate students).¹⁶⁰

These findings are consistent with earlier research showing that transgender students in higher education are at increased risk of discrimination and harassment. The Williams Institute's 2018 report on transgender students in higher education highlighted that transgender students nationwide "report greater levels of harassment and discrimination, have a more negative perception of campus and classroom climates, and feel less accepted as part of the campus community, as compared to cisgender students."¹⁶¹ The 2015 USTS data reflected similar experiences in higher education, with one-quarter of respondents (24%) who were out as transgender in college or vocational school reporting verbal, physical, or sexual harassment at school.¹⁶² One study found that the lack of gender-inclusive restrooms for transgender college students was correlated with suicidality.¹⁶³

Although not focused on healthcare workers, Williams Institute research also indicates that LGBTQ employees continue to face challenges in the workplace, despite nationwide protections from employment discrimination. A 2021 nationally representative survey conducted by the Williams Institute found that 46% of LGBT workers experienced employment discrimination or harassment because of their sexual orientation or gender identity at some point in their lives.¹⁶⁴ The study also found that about one-third (31.1%) of LGBT respondents reported experiencing discrimination or harassment based on their sexual orientation or gender identity in the workplace within the past five years.¹⁶⁵ About one in ten (9%) LGBT employees reported that they had experienced employment discrimination (fired or not hired) because of their sexual orientation or gender identity within the prior year.¹⁶⁶ LGBT employees of color and transgender employees reported higher rates of several forms of discrimination and harassment than white

¹⁵⁸ *Id.* at 33.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 78.

¹⁶¹ GOLDBERG, *TRANSGENER STUDENTS IN HIGHER EDUCATION*, *supra* note 145, at 6.

¹⁶² JAMES ET AL., *supra* note 39, at 136.

¹⁶³ Kristie L. Seelman, *Transgender Adults' Access to College Bathrooms and Housing and the Relationship to Suicidality*, 63 J. OF HOMOSEXUALITY 1378 (2016), <https://doi.org/10.1080/00918369.2016.1157998>.

¹⁶⁴ BRAD SEARS ET AL., WILLIAMS INST., *LGBT PEOPLE'S EXPERIENCES OF WORKPLACE HARASSMENT AND DISCRIMINATION 1* (2021), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Workplace-Discrimination-Sep-2021.pdf>.

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

LGBT and cisgender employees.¹⁶⁷ In addition, data from the Generations study showed that LGB people were more likely to report adverse employment experiences over their lifetime: 60% of LGB people reported ever having been fired from or denied a job compared to 40% of non-LGB people.¹⁶⁸

Other studies focused on the experiences of LGBT healthcare workers specifically have found that experience similar challenges in the workplace. For example, a survey of 277 LGBTQ+ healthcare professionals found that 14% had heard anti-LGBTQ comments in the workplace and 8% witnessed harassment of an LGBTQ employee.¹⁶⁹ Respondents reported experiencing several forms of discrimination including refusals of tenure, loss of patients, promotion delays, and use of incorrect pronouns.¹⁷⁰ Many LGBTQ+ healthcare professionals reported that they were not out in the workplace due to fear of discrimination and harassment.¹⁷¹ These findings reflect those of earlier studies focused on the experiences of physicians and nurses.¹⁷²

III. Discrimination Negatively Impacts the Health and Wellbeing of LGBTQ People

Discrimination in connection with services designed to meet the needs of these communities can further exacerbate the issues that the awards are intended to address, undermining the goals and purposes of these programs and HHS more generally. In particular, experiences of discrimination are linked to health disparities between LGBTQ and non-LGBTQ populations, as articulated in the minority stress research literature.¹⁷³

The minority stress model, which the Institute of Medicine has recognized as a core perspective for understanding LGBT health,¹⁷⁴ describes how LGBT people experience chronic stress stemming from their stigmatization. While certain stressors—such as loss of a job—are

¹⁶⁷ *Id.* at 2-3.

¹⁶⁸ ILAN H. MEYER, WILLIAMS INST., EXPERIENCES OF DISCRIMINATION AMONG LESBIAN, GAY, AND BISEXUAL PEOPLE IN THE US 1 (2019), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGB-Experience-Discrim-Apr-2019.pdf>.

¹⁶⁹ Michele J. Eliason, Carl Streed, Jr. & Michael Henne, *Coping with Stress as an LGBTQ+ Healthcare Professional*, 65 J. HOMOSEXUALITY 561, 563 (2018).

¹⁷⁰ *Id.* at 567.

¹⁷¹ *Id.* at 566.

¹⁷² See, e.g., Michele J. Eliason et al., *Lesbian, Gay, Bisexual, Transgender, and Queer/Questioning Nurses' Experiences in the Workplace*, 27 J. PROF. NURSING 237 (2011); Michele J. Eliason, Suzanne L. Dibble & Patricia A. Robertson, *Lesbian, Gay, Bisexual, and Transgender (LGBT) Physicians' Experiences in the Workplace*, 58 J. HOMOSEXUALITY 1355 (2011); Donna J. Brogan, Erica Frank & Lisa Elon, *Harassment of Lesbians as Medical Students and Physicians*, 282 JAMA 1290 (1999).

¹⁷³ See, e.g., Ilan H. Meyer, *Minority Stress and Mental Health in Gay Men*, 36 J. HEALTH & SOC. BEHAV. 38, 38 (1995), <https://www.jstor.org/stable/2137286>; cf. Ilan H. Meyer, Sharon Schwartz & David M. Frost, *Social Patterning of Stress and Coping: Does Disadvantaged Social Statuses Confer More Stress and Fewer Coping Resources?* 67 SOC. SCI. & MED. 368, 371 (2008), <https://pubmed.ncbi.nlm.nih.gov/18433961/> (examining “social stress theory”).

¹⁷⁴ INSTITUTE OF MEDICINE, THE HEALTH OF LESBIAN, GAY, BISEXUAL, AND TRANSGENDER PEOPLE: BUILDING A FOUNDATION FOR BETTER UNDERSTANDING 20 (2011), <https://www.ncbi.nlm.nih.gov/books/NBK64806>.

ubiquitous in society, experienced by LGBT and non-LGBT people alike, LGBT people are uniquely exposed to stress arising from anti-LGBT stigma and prejudice. Prejudice leads LGBT people to experience *excess* exposure to stress compared with non-LGBT people who are not exposed to anti-LGBT prejudice (all other factors being equal).

Excess stress exposure confers an elevated risk for certain mental and physical health conditions.¹⁷⁵ For example, one study found that LGB people who had experienced a prejudice-related stressful life event were about three times more likely than those who did not experience such an event to have suffered a serious physical health problem over a one-year period.¹⁷⁶

Stigma and stress related to sexual orientation and gender identity discrimination have also been shown to affect mental health and wellbeing. One study found that state policies that target stigmatized individuals for social exclusion had a deleterious effect on the mental health of LGB people.¹⁷⁷ Another study found that living in stigmatizing communities may increase vulnerability to stigma-related stressors and risk for suicidality among transgender people.¹⁷⁸ A third study focused on transgender veterans noted that “even after adjusting for key sociodemographic characteristics, transgender patients living in states with employment policies that include transgender status or gender identity had significantly lower odds of having a medical visit for mood disorders or self-directed violence than did their peers living in states without such legal protections.”¹⁷⁹

Survey data provide further evidence of the relationship between discrimination and negative well-being. According to a 2017 nationally representative survey, among LGBT people who experienced sexual orientation or gender identity discrimination in the past year, 68.5% reported that discrimination at least somewhat negatively affected their psychological well-being; 43.7% reported that discrimination negatively impacted their physical well-being; 47.7% reported that

¹⁷⁵ See, e.g., Susan D. Cochran & Vickie M. Mays, *Sexual Orientation and Mental Health*, in HANDBOOK OF PSYCHOLOGY AND SEXUAL ORIENTATION 204, 208–09 (Charlotte J. Patterson & Anthony R. D’Augelli eds., 2013); Walter Bockting et al., *Adult Development and Quality of Life of Transgender and Gender Nonconforming People*, 23 CURRENT OP. ENDOCRINOLOGY, DIABETES & OBESITY 188 (2016), <https://pubmed.ncbi.nlm.nih.gov/26835800/>; Michael L. Hendricks & Rylan J. Testa, *A Conceptual Framework for Clinical Work with Transgender and Gender Nonconforming Clients: An Adaptation of the Minority Stress Model*, 43 PROF. PSYCH.: RES. & PRAC. 460 (2012), <https://psycnet.apa.org/record/2012-21304-001>; Gregory M. Herek & Linda D. Garnets, *Sexual Orientation and Mental Health*, ANN. REV. CLINICAL PSYCH. 353 (2007), <https://www.annualreviews.org/doi/abs/10.1146/annurev.clinpsy.3.022806.091510>; Vickie M. Mays & Susan D. Cochran, *Mental Health Correlates of Perceived Discrimination Among Lesbian, Gay, and Bisexual Adults in the United States*, 91 AM. J. PUB. HEALTH 1869 (2001), <https://pubmed.ncbi.nlm.nih.gov/11684618/>.

¹⁷⁶ Frost, Lehavot & Meyer, *supra* note 48.

¹⁷⁷ Mark L. Hatzenbuehler, *Structural Stigma and the Health of Lesbian, Gay, and Bisexual Populations*, 23 CURRENT DIRECTIONS PSYCH. SCI. 127 (2014).

¹⁷⁸ Amaya Perez-Brumer et al., *Individual and Structural Level Risk Factors for Suicide Attempts among Transgender Adults*, 42 BEHAV. MED. 3, 164-171 (2015), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4707041/>.

¹⁷⁹ John R. Blosnich et al., *Mental Health of Transgender Veterans in US States with and Without Discrimination and Hate Crime Legal Protection*, 106 AM. J. PUB. HEALTH 534 (2016).

discrimination negatively impacted their spiritual well-being; 52.8% reported that discrimination negatively impacted their work environment; and 56.6% reported that it negatively impacted their neighborhood and community environment.¹⁸⁰

IV. Recommendations

The research reviewed above establishes the importance of sexual orientation and gender identity non-discrimination protections in connection with HHS grants and programs. In response to several prompts in the Proposed Rule, we recommend that the Department consider clarifying and strengthening these non-discrimination requirements in several ways.

A. The Department Should Include Language in § 75.300(e) To Cover Unnamed Current and Future Laws that Prohibit Discrimination Based on Sex

We agree with the Department’s assessment that the 13 named statutes which prohibit discrimination based on sex should be interpreted consistent with the Supreme Court’s decision in *Bostock v. Clayton County*. As the Department explains, there is no language in these statutes to suggest that the agency or courts should depart from the longstanding practice of looking to Title VII case law to interpret analogous provisions in other non-discrimination laws.¹⁸¹

The Department seeks comment on “whether [it] should include language or guidance in § 75.300(e) to cover current or future laws that prohibit sex discrimination that are not set forth above.” (44753). We recommend that the Department include language to this effect. Specifically, we recommend that the Department amend § 75.300(e) to state that “Paragraph (e) applies to all HHS authorities that prohibit discrimination on the basis of sex in award programs, including, but not limited to, 8 U.S.C. 1522, Authorization for programs for domestic resettlement of and assistance to refugees; 42 U.S.C. 290cc–33, Projects for Assistance in Transition from Homelessness; 42 U.S.C. 290ff–1, Children with Serious Emotional Disturbances; 42 U.S.C. 295m, Title VII Health Workforce Programs; 42 U.S.C. 296g, Nursing Workforce Development; 42 U.S.C. 300w–7, Preventive Health Services Block Grant; 42 U.S.C. 300x–57, Substance Abuse Treatment and Prevention Block Grant; Community Mental Health Services Block Grant; 42 U.S.C. 708, Maternal and Child Health Block Grant; 42 U.S.C. 5151, Disaster relief; 42 U.S.C. 8625, Low Income Home Energy Assistance Program; 42 U.S.C. 9849,

¹⁸⁰ Sejal Singh & Laura E. Durso, *Widespread Discrimination Continues to Shape LGBT People’s Lives in Both Subtle and Significant Ways*, CTR. FOR AM. PROGRESS (May 2, 2017), <https://www.americanprogress.org/issues/lgbtq-rights/news/2017/05/02/429529/widespread-discrimination-continues-shape-lgbt-peoples-lives-subtle-significant-ways>.

¹⁸¹ Christy Mallory, Luis Vasquez & Celia Meredith, Williams Inst., *Legal Protections for LGBT People after Bostock v. Clayton County* 4 (2020), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Bostock-State-Laws-Jul-2020.pdf>.

Head Start; 42 U.S.C. 9918, Community Services Block Grant Program; and 42 U.S.C. 10406, Family Violence Prevention and Services.”

This language will ensure consistent interpretation and application across HHS award programs of all sex non-discrimination requirements that are existing, but not included in the named statutes, or may be enacted in the future.

B. The Department Should Consider the Evidence and Impact of Widespread Discrimination against LGBTQ People when Determining Whether Exemptions are Appropriate

The Department seeks comment on its proposed approach to determining whether application of its non-discrimination requirements to an individual awardee would violate the Religious Freedom Restoration Act (RFRA) or other federal laws. The Department notes that, in applying RFRA, it will consider “whether any substantial burden imposed on a person’s exercise of religion is in furtherance of a compelling interest and is the least restrictive means of advancing that compelling interest.” In making this assessment, we encourage the Department to take into account the widespread and pervasive pattern of discrimination against LGBTQ people, including in areas addressed by HHS awards and programs, as well as the impact of discrimination on LGBTQ people. Some courts have looked to similar evidence when assessing whether application of LGBTQ-inclusive non-discrimination policies violates RFRA or constitutional provisions, and determined that such policies are narrowly tailored to serve a compelling government interest.¹⁸² The Supreme Court’s recent decision in *303 Creative v. Elenis*¹⁸³ does not command a different result here at least insofar as the non-discrimination requirements do not compel the speech of service providers in violation of the First Amendment. The Court affirmed in *303 Creative* that “governments in this country have a ‘compelling interest’ in eliminating discrimination in places of public accommodation,” though it held that “public accommodations laws can sweep too broadly when deployed to compel speech.”¹⁸⁴

In addition, we recommend that the Department develop and apply a framework for assessing whether application of its non-discrimination requirements to a particular entity is narrowly tailored to achieving its goal. In particular, we recommend that the Department consider whether sufficient alternative sources of assistance and support would exist for LGBTQ people if the exemption were granted. This assessment should include a determination of whether there are

¹⁸² *E.g.*, *Telescope Media Grp. v. Lucero*, 936 F.3d 740 (8th Cir. 2019); *Doe v. Boyertown*, 897 F.3d 518, 527 (3rd Cir. 2018); *EEOC v. R.G. & G.R. Harris Funeral Homes*, 884 F.3d 560 (6th Cir. 2018); *John & Jane Parents 1 v. Montgomery Cnty. Bd. Educ.*, 622 F. Supp. 3d 118 (D. Md. 2022); *Woods v. Seattle’s Union Gospel Mission*, 481 P.3d 1060 (Wash. 2021); *State v. Arlene’s Flowers*, 441 P.3d 1203 (Wash. 2019); *Parents for Privacy v. Dallas Sch. Dist. No. 2*, 326 F. Supp. 3d 1075 (D. Ore. 2018); *N. Coast Women’s Care Med. Grp. v. Superior Court*, 189 P.3d 959 (Cal. 2008). *But see* *Braidwood Management v. EEOC*, No. 22-10145 (5th Cir. 2023).

¹⁸³ 600 U.S. __ (2023).

¹⁸⁴ *Id.* slip op. at *12, 14.

other service providers in the immediate area for the particular type of service at issue; whether those other providers offer services to the same extent and on the same terms (for example, at the same cost) as the provider seeking an exemption; and whether those other providers are willing, able, and have the capacity to serve LGBTQ people. A finding by the Department that insufficient alternative sources of assistance and support exist would indicate that application of its non-discrimination requirements is narrowly tailored, and should weigh against the Department granting the exemption.

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