Next Steps for Building Better LGBTQI Health

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The Biden-Harris Administration is faced with unparalleled challenges in domestic health policy that must be immediately met with all the tools in the public health toolkit. In addition to proposing and implementing strategies to contain the COVID-19 pandemic, early executive actions also suggest that this Administration is taking seriously the importance of addressing population health and the impact of stigma and structural oppression on the health of marginalized communities.

For centuries, lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI) people have been stigmatized and subjected to systemic discrimination. This stigma and discrimination have affected health care as well as other aspects of life: LGBTQI people still encounter outright refusals of care; hostility and lack of understanding from health care providers; and a system based on heterosexual, cisgender norms that disregards their needs. As a result, LGBTQI populations suffer worse health compared to the general population. According to a 2020 report by the National Academies of Sciences, Engineering, and Medicine, the discrimination that LGBTQI people experience throughout their lives is harmful in myriad different ways. LGBTQ people are more likely to attempt and commit suicide, use and abuse harmful substances, and

experience anxiety and depression than their non-queer counterparts. Research also demonstrates that social and environmental factors contribute to disproportionate rates of HIV and cancer in LGBT people.

While more research is needed on the experiences of intersex people, and in particular those from ethnic and racial minorities, it is likely that they, like Black and brown LGBTQ people, endure a double burden of racial bias and stigma based on sexual orientation, gender identity and expression, or intersex status. Research shows that Black LGBT people report poorer economic, mental, and physical health, compared to their non-LGBT counterparts. The COVID-19 pandemic has exacerbated the health and economic burdens that are crushing communities of color, including LGBTQI people of color. For example, the death rate of Black, Latine and Native communities from coronavirus are 2.6-2.8 times higher than white people. The pandemic also has had particularly harsh effects on the economic security of people of color, who disproportionately work in service industries that have experienced particularly high rates of job loss, or who work in health care and other service jobs that involve high risks of exposure to the virus. This includes many LGBTQI people who work in healthcare and other service jobs.

These stark disparities in the healthcare system are the result of underinvestment in the health of marginalized communities, and the Biden-Harris Administration has an opportunity to correct course. This letter identifies further executive actions the Administration can take to swiftly build on their initial steps to protect the health of LGBTQI populations:

Coronavirus. The development of multiple, highly effective vaccine candidates presents an opportunity to change the course of the pandemic. Yet, this potential is endangered by the same forces of stigma and discrimination that have created health injustices in marginalized communities. The new Administration should supplement the decisive, far-reaching measures already announced by issuing guidance to protect vulnerable populations from discrimination in vaccine distribution, including releasing people at risk of coronavirus from incarceration and detention facilities. The federal government should encourage states to include LGBTQI people in the vaccine distribution planning process and outreach efforts, integrate collection of sexual orientation and gender identity and intersex status data in culturally competent and scientifically sound ways, enforce non-discrimination requirements at federally funded vaccine distribution sites, and ensure that all people, regardless of race, gender expression, immigration status, criminal record, or ability to pay, are able to access the vaccine when they become eligible to receive it.

Civil Rights. The previous Administration made concerted attempts to undermine the civil rights of sexual and gender minorities. On his first day, President Biden took concrete steps to secure the economic and physical security of LGBTQI people throughout the country. The President issued an executive order instructing agencies to bring all regulations, guidance, and

enforcement mechanisms in line with the Supreme Court's decision in *Bostock v. Clayton County*. The President's order and Supreme Court's decision strengthen nondiscrimination protections on the basis of sex, sexual orientation, and gender identity, including in health care under Section 1557 of the Affordable Care Act (ACA). In addition to the freeze on processing newly issued rulemakings, the US Department of Health and Human Services (HHS) should begin the process of reversing the final rules enabling discrimination enacted under the Trump Administration, in particular to begin new rulemaking interpreting Section 1557 and to rescind regulations encouraging discrimination in HHS grant programs. These and related actions should include protections of intersex health, ensure non-discriminatory access to health care for LGBTQI people in federal programs, including prisons and the Medicaid and Medicare programs, and make clear that the Office for Civil Rights is accepting and investigating civil rights complaints based on gender identity, sexual orientation, and intersex status. Finally, HHS should begin an audit of the operations of the Conscience and Religious Freedom Division to ensure that the mission of the Office for Civil Rights is being met and the civil rights of LGBTQI people are being protected.

Racial and Economic Justice. True equity for LGBTQI people, including health equity, is inseparable from racial equity and economic justice. Building on new initiatives to advance racial equity across the federal government, the Administration should continue to advance initiatives to address systemic racism and interpersonal prejudice and to curb growing economic disparities. These efforts must acknowledge, and expressly include, the many persons of color and persons living in or at risk of poverty who are LGBTQI.

Data Collection. The lack of systematic data collection on sexual and gender minorities is a barrier to effective use of resources to combat public health challenges and target interventions to ensure the health and wellbeing of LGBTQI people. HHS can ameliorate this by ensuring comprehensive agency participation in the Federal Interagency Working Group on Improving Measurement of Sexual Orientation and Gender Identity and the express inclusion of intersex status in the working group mandate. Additionally, the CDC should convene key leaders from across the agency to develop plans to incorporate sexual orientation and gender identity and intersex status data collection in all areas of health, including cardiovascular health, cancer, and mortality. These steps build on the President's announcement of a Whole-of-Government Initiative to Advance Equity, including a working group to ensure that federal data collection reflects the diversity of America.

LGBTQI Inclusion. The inclusion of LGBTQI people in government positions is essential for advancing their rights and health. The Administration should ensure that there are highly qualified LGBTQI appointees in positions across the federal government, and especially at the Department of Health and Human Services, including appointing the first-ever openly intersex political appointee.

Intersex Health and Dignity. Researchers estimate that up to 1.7 percent of people are born intersex. While in some cases knowledge of their intersex status may remain hidden until adulthood, the experience of intersex people in health care often begins with unnecessary cosmetic surgery on the genitals of infants, interventions that have been deemed a form of torture by the United Nations. This has created a human rights crisis for the United States. The President should instruct state Medicaid directors to deny reimbursement for non-essential, irreversible intersex surgery for infants and children and mandate a delay of all procedures until the impacted individual is able to meaningfully participate in the decision-making process. Additionally, President Biden should, in recognition of the intersex community and their unique needs, issue a directive to include intersex populations in all LGBTQI-relevant domestic and foreign federal policies and programs to work to reduce harms, health disparities, and discrimination experienced by intersex people.

Reproductive Health. The previous Administration implemented policies limiting access to reproductive health services, both domestically and abroad. Reproductive health services are essential for LGBTQI people, in particular for transgender, bisexual, and lesbian people, who require reproductive health services at elevated rates compared to cisgender and heterosexual people. We applaud President Biden's order to examine Title X regulations related to reproductive health, rights, and justice that limit access to reproductive health information and services, and to reverse the domestic and global gag rules, which undermine access to contraception.

LGBTQI Students. In the Trump Administration, the Department of Education launched many initiatives to undercut the rights of LGBTQI students. These attacks have had harmful impacts on young people's physical and mental health. President Biden's Executive Order on Preventing and Combatting Discrimination on the Basis of Gender Identity and Sexual Orientation instructs the Department of Education that, consistent with the Supreme Court's ruling in *Bostock*, sex discrimination prohibited by Title IX includes discrimination based on sexual orientation and gender identity, but leaves out express mention of intersex people. The prohibition on sex stereotyping applies to intersex people as well, and we call on President Biden to include mention of intersex people in executive orders to ensure protection is applied appropriately. The new Department of Education should implement policies to protect all LGBTQI students and to encourage science-based sex education that recognizes the inherent dignity of diverse sexual orientations, gender identities and expressions, and differences in sexual development.

Immigration and Asylum. President Biden's initiatives to reform the broken and unjust immigration system, including the hope of lasting relief for the many LGBTQI and other Dreamers and undocumented persons who have contributed to their communities for many years, are important first steps in this process. As a next step, the rules governing the refugee and

asylum system should be realigned to comply with US obligations under international law and the Public Charge Rule should be interpreted to advance the health and wellbeing of immigrants. Homeland Security must investigate the systemic abuse of LGBTQI immigrants in detention and end the practice of detaining immigrants whose gender identity, sexual orientation, or health status places them in particular danger.

Conversion Therapy. One of the most pernicious practices threatening the mental and physical health of LGBTQI people, including not only young people but also adults in guardianship, is conversion therapy, or the systematic attempt to change someone's sexual orientation or gender identity. Every major medical and mental health organization has decried the illegitimate and discriminatory practice. Yet, an estimated 57,000 youths will be subjected to this harmful practice before they turn 18. The new Administration should instruct HHS to issue regulations barring federal funds from being used to fund therapies and programs that pressure individuals to change their sexual orientation or self-identified gender identity. In addition, the Administration should continue to evaluate and support family acceptance interventions, which seek to address LGBTQ youth displacement and mental health through facilitating education and support of healthy family relationships.

Menthol and Other Tobacco Flavors. Elevated rates of tobacco use among LGBTQ people, influenced by marketing campaigns from tobacco companies targeting vulnerable populations, are contributing to illness in these communities. Data show that recent surges in tobacco use among children are driven by access to flavored e-cigarettes. One-third of LGB youth are in danger of addiction to nicotine via e-cigarettes. Passing flavor bans that do not include menthol not only disproportionately harms Black people but is also shown to be ineffective. In order to safeguard health, the Biden-Harris Administration should ban the production of menthol and other flavors in all tobacco products.

LGBTQI Elders. Aging LGBTQI persons face many challenges, exacerbated by systemic stigma and discrimination in long-term care and senior services – and frequently, by the failure of service providers and government funders to even acknowledge their existence. The new Administration should launch initiatives to understand and address the needs of LGBTQI elders, including by issuing federal guidelines to protect against discrimination in long-term care and providing financial support for LGBTQI-inclusive services. We ask the Administration to re-include a transgender question in the National Survey of Older Americans Act Participants. Additionally, the Administration should robustly implement the LGBT-inclusive language in the recent reauthorization of the Older Americans Act.

HIV Epidemic. Advancements in the treatment and prevention of HIV present the opportunity to stop the spread of HIV. The previous administration's commitment to ending the HIV epidemic was undermined by discriminatory policies from HUD and HHS. By seeking to allow

government contractors to discriminate, these policies promulgate fear among LGBTQI people. Policies that cause people to fear using public services, like the "Public Charge Rule," create barriers to accessing shelter, nutrition, and medical care for many poor, sexual and gender minorities. Criminalization of HIV, sex work, and drug use are also barriers to HIV prevention and treatment with key populations that must be reached to end the spread of HIV. The new Administration should issue an EO instructing HHS to review all federal policies and regulations that conflict with or inhibit accomplishment of the goals of the End the HIV Epidemic Initiative, and to issue a Request for Information to assist in this review.

Military Service. Advancements in medical treatment and expansions of service opportunities make it clear that the exclusion of HIV positive, transgender, and intersex (referred to incorrectly as "hermaphrodites" under current regulations) people from military service is not based on reasoned science. The Biden Administration has already reversed the ban on transgender service members, whose exclusion from military service propagated stigmatizing and harmful messages to service members and the public. The President should also issue an Executive Order to reverse the ban on HIV positive and intersex people in the military.

Criminal Justice. Racial and economic justice also requires the transformation of the criminal justice system. In addition to greatly needed measures to address police violence and discriminatory practices of the criminal justice system generally, the Administration must address the abuse of LGBTQI incarcerated persons in federal custody and incentivize the states to address abuses in their jurisdictions. President Biden's order phasing out the use of private prisons by the Department of Justice is an appropriate first step. Federal and state governments must put an end to all private prisons, as the system incentivizes the denial of necessary health care to incarcerated people, including transgender persons and individuals living with HIV.

These recommendations were authored by a collaboration of the following organizations: AIDS United, Callen-Lorde Community Health Center, Fenway Health, GLMA: Health Professionals Advancing LGBTQ Equality, Howard Brown Health, interACT: Advocates for Intersex Youth, Lyon-Martin Health Services, National Black Justice Coalition, National Center for Lesbian Rights, National Center for Transgender Equality, National LGBT Cancer Network, National LGBTQ Task Force, SAGE, Transgender Law Center, Transgender Legal Defense and Education Fund, and Whitman-Walker Institute.