Overview

(June 22, 2020, Washington, DC) — Today, Steptoe & Johnson LLP and Lambda Legal filed a lawsuit challenging the US Department of Health and Human Services’s (HHS) recent publication of a health care discrimination rule that purports to carve out LGBTQ people and other vulnerable populations from the nondiscrimination protections of Section 1557 of the Affordable Care Act. Section 1557 prohibits discrimination on the basis of sex, among other bases. On June 15, 2020, the US Supreme Court held that discrimination on the basis of a person’s transgender status or sexual orientation is discrimination on the basis of sex.

Steptoe and Lambda Legal filed the suit – Whitman-Walker Clinic v. HHS – on behalf of Whitman-Walker Health, the TransLatin@ Coalition and its members, Bradbury-Sullivan LGBT Community Center, Los Angeles LGBT Center, GLMA: Health Professionals Advancing LGBTQ Equality, AGLP: The Association of LGBTQ Psychiatrists, and four individual doctors.

Steptoe partner Laurie Edelstein, who leads the firm’s representation, stated: “Steptoe has a long history of fighting for the rights of the LGBTQ community. We participated in the challenges to Proposition 8 in California, the military’s ban on transgender soldiers, and the government’s Don’t Ask Don’t Tell policy. We also filed a brief on behalf of 40 major employers in the Masterpiece Cakeshop case advocating the importance of non-discrimination laws. We are proud to join Lambda Legal in this latest battle to protect the right of LGBTQ people to receive health care free of discrimination.”

In 2016, the Obama administration finalized a rule implementing the nondiscrimination provisions of the Affordable Care Act known as Section 1557. The rule prohibited discrimination on the basis of gender identity, transgender status, or sex stereotypes as forms of sex discrimination. In May 2019, the Trump administration announced a proposed rule change designed to roll back these protections. Despite numerous comments raising significant concerns about the proposed changes and the Supreme Court’s ruling on June 15, 2020 that discrimination because of a person’s transgender status or sexual orientation is discrimination on the basis of sex, on June 19, 2020, HHS published the health care discrimination rule.

The rule attempts to limit protections for LGBTQ people under the Affordable Care Act’s nondiscrimination provisions and invites health care workers, doctors, hospitals and health insurance companies that receive federal funding to refuse to provide or cover health care services critical to the health and well-being of LGBTQ people, such as gender-affirming and reproductive care. The rule also seeks to limit the remedies available to people who face health disparities, limit access to health care for people with limited English proficiency, and dramatically reduce the number of health care entities and insurance subject to the rule.

Omar Gonzalez-Pagan, senior attorney and health care strategist for Lambda Legal commented: “HHS’s health care discrimination rule does not change the law but instead creates chaos and confusion where there was once clarity about the right of everyone in our communities, and specifically transgender people, to receive health care free of discrimination.”

The health care discrimination rule will take effect on August 18, 2020 if it is not enjoined.

Along with Edelstein, the multi-office Steptoe team includes partner Michael Vatis, with associates Johanna Dennehy,
Khristoph Becker, and Laura Lane-Steele.

About Steptoe

In more than 100 years of practice, Steptoe has earned an international reputation for vigorous representation of clients before governmental agencies, successful advocacy in litigation and arbitration, and creative and practical advice in structuring business transactions. Steptoe has more than 500 lawyers and other professional staff across offices in Beijing, Brussels, Chicago, Hong Kong, London, Los Angeles, New York, San Francisco, and Washington. For more information, visit www.steptoe.com.

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