

UNITED STATES OF AMERICA
BEFORE THE ADMINISTRATION FOR COMMUNITY LIVING
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Information:) RIN 0985-AA17
Older Americans Act Regulations)

RESPONSE OF WHITMAN-WALKER HEALTH AND THE WHITMAN-WALKER
INSTITUTE

Whitman-Walker Health and the Whitman-Walker Institute are please to submit these comments in response to the agency's Request for Information, 87 Fed. Reg. 27,160 (May 6, 2022), <https://www.federalregister.gov/documents/2022/05/06/2022-09713/request-for-information-older-americans-act-regulations>. We specifically request that the following regulations under the Older Americans Act be amended to expressly require state and local grant recipients to treat LGBTQ+ older persons, and older persons living with HIV, as populations of greatest social needs, for purposes of prioritizing services and resources:

- 45 CFR Part 1321 – Grants to State and Community Programs on Aging
- 45 CFR Part 1324 – Allotments for Vulnerable Elder Rights Protection Activities, including Subpart A – State Long-Term Care Ombudsman Program

Whitman-Walker Health is a Federally Qualified Health Center serving the greater Washington, DC metropolitan area with a wide range of health and health-supportive services, with specialties in HIV treatment and prevention and LGBTQ health care. We offer HIV, gender-affirming and other LGBTQ specialist care; primary health care; mental health and substance use treatment; dental care; community health services; HIV and STI testing, prevention and treatment services; legal services; and public benefits and insurance navigation services. The Whitman-Walker Institute conducts a wide range a clinical and other health research projects; advocates for evidence-based, just, and inclusive federal, state, and local laws

and public policies; and conducts trainings for health care, social service and legal professionals and the general public, with an emphasis on LGBTQ+ and HIV-related issues.

The core mission of Whitman-Walker Health's and Whitman-Walker Institute (together, Whitman-Walker) is to provide the highest quality, culturally informed and sensitive health care to persons of every sexuality, gender, race, and ethnicity, and to advance the health, well-being, and dignity and sexual and gender diverse persons through our health care expertise, research, and advocacy. In calendar year 2021 we provided direct health care services to 16,242 distinct individuals, despite the challenges posed by the continuing COVID pandemic. Of our 2021 patients, 52% identified as gay, lesbian, bisexual, or a sexual orientation other than heterosexual (63% of those who identified any sexual orientation). More than 14% of these patients identified as transgender, nonbinary, genderqueer, or otherwise non-cisgender (more than 17% of those who provided any gender identity).

Very significant numbers of our patients are older individuals. Of our 2021 health care patients, 26% were age 50 or older – 12% were age 60 or older. Many of patients living with HIV are long-term survivors, and others were diagnosed at an older age, and our medical and behavioral health providers help them manage the many physical and mental health challenges that are faced by persons growing older with HIV. Many of our aging LGBTQ patients and legal clients, regardless of their HIV status, struggle with social isolation and economic challenges resulting from decades of social stigma, family estrangement, and economic discrimination. Our behavioral health specialists, lawyers, community health workers and patient advocates work closely with other services providers and advocates in Washington, DC, in an LGBTQ Aging Services Network, to offer peer-led support groups and other services.

It is vitally important for ACL to update existing regulations to more effectively meeting the needs of LGBTQ+ older people and older people living with HIV, in alignment with Executive Order 13985,¹ and to realize the promise of the inclusive language found in the 2020 reauthorization of the Older Americans Act (OAA). The statute requires that State Plans established and funded by the OAA, and Area Plans established and funded under State Plans, develop and implement comprehensive plans for determining and serving the needs of older persons with disabilities and older persons with “greatest social needs.”² The statute also defines “greatest social need” as “need caused by noneconomic factors, which include ... cultural, social, or geographical isolation.”³ The ACL’s August 5, 2021 [Guidance for Developing State Plans on Aging](#) accurately observed that the statutory definition of greatest social need as encompassing cultural and social isolation includes LGBTQ+ people (at pages 2-3), and also noted that State Plans should include plans for providing services to older individuals with HIV/AIDS (at page 8).

It is critical that ACL issue regulations clearly and forcefully identifying the need for OAA-funded State and Area Plans, and State Units on Aging and Area Agencies on Aging, to recognize LGBTQ+ older persons, and older persons living with HIV, as persons of greatest social need. The brief references in the August 2021 state letter, and in previous ACL guidance documents, are insufficient to realize the promise of the OAA language. Many Area Agencies on Aging (AAA) and State Units on Aging (SUA) have not implemented inclusive policies or are backsliding from previously adopted inclusive policies. For LGBTQ+ older people and older

¹ *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*, 86 Fed. Reg. 7009 (Jan. 25, 2021).

² 42 U.S.C. §3026(Area Plans) and §3027 (State Plans).

³ 42 U.S.C. § 3002(24)(C).

people living with HIV, access to critical aging services and supports should not depend on the preferences or priorities of the AAA or SUA on which they rely. An LGBTQ+ older person living in rural Mississippi equally deserves the right to age-in-place as an LGBTQ+ older person living in New York City. And both of them deserve to have the same access to aging services and supports as their straight and cisgender counterparts. In addition to consistency, ACL must be explicit about what its State Plan requirements mean, so that an aging network has no doubt that all older people – including LGBTQ+ older people and older people living with HIV – are entitled to access to the services and supports that they need to remain independent.⁴

Even in the District of Columbia, which is more progressive on LGBTQ+ and HIV issues than many states⁵ – much more needs to be done to meet the needs of older LGBTQ+ persons and those aging with HIV. Many senior service organizations still do not recognize or are not comfortable acknowledging their needs. DC lacks a facility offering regular or even occasional meals for LGBTQ+ seniors – which is a major way to reach individuals suffering from isolation. Many if not most long-term care facilities and home health care services are directly or indirectly religiously affiliated, and Whitman-Walker staff frequently receive worried inquiries from older or disabled LGBTQ+ persons needing assistance who are fearful of allowing religiously biased home health workers into their homes, much less entering a religiously affiliated facility.

⁴ There is substantial documentation of the many needs of older LGBTQ+ persons, and ways to meet those needs, on the National Resource Center on LGBTQ+ Aging webpage, <https://www.lgbtagingcenter.org/>, operated by SAGE and funded by HHS. The unique challenges faced by people aging with HIV, and the importance of SUAs and AAAs to address those needs, are discussed in the NATIONAL HIV/AIDS STRATEGY: 2022-2025, <https://hivgov-prod-v3.s3.amazonaws.com/s3fs-public/NHAS-2022-2025.pdf>, at pages 44-45, 54-55.

⁵ DC Act 23-467, Care for LGBTQ Seniors and Seniors Living With HIV Amendment Act of 2020, available at https://lms.dccouncil.us/downloads/LIMS/41627/Signed_Act/B23-0037-Signed_Act.pdf. The law: (1) the DC Office on Aging must designate LGBTQ seniors and seniors living with HIV as populations of greatest social need; (2) creates a “bill of rights” for persons in long-term care facilities; and (3) requires training of long-term care facility staff on LGBTQ and HIV issues every 2 years.

Moreover, in the Washington, DC metropolitan area, many of our patients and clients live in Maryland or Virginia – or states further removed – which lack the legal protections that exist in DC. Federal regulations that clearly establish LGBTQ+ people and people with HIV as populations of greatest need, set out their rights in senior service and long-term care settings – and condition federal grants on recognition of those rights and guidelines – promise to greatly advance the quality of life for many neglected and endangered persons.

Thank you for this opportunity. If you have any questions or if we can provide additional information, please do not hesitate to reach out to me.

Respectfully,

A handwritten signature in cursive script that reads "Daniel Bruner". The signature is written in dark ink on a light-colored background.

Daniel Bruner, JD, MPP
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June 6, 2022