January 28, 2016

To Whom It May Concern:

On behalf of the undersigned organizations, which advocate on behalf of lesbian, gay, bisexual and transgender (LGBT) communities, we wish to express our opposition against H.R. 2646, the Helping Families in Mental Health Crisis Act. While our nation’s mental health system is in dire need of reform, H.R. 2646 is not the answer. Although a few of the proposed reforms in this bill have the potential to positively impact the lives of some individuals with psychiatric disabilities and should be incorporated into alternative legislation, many of the current bill’s provisions would cause irreparable harm to both our mental health system and to many Americans with psychiatric disabilities—including many LGBT individuals. LGBT individuals are disproportionately affected by mental illness, face pervasive discrimination in health care settings and can experience unique vulnerabilities when denied privacy or decision-making power in their treatments.

**LGBT individuals may be disproportionately impacted by H.R. 2646.**

In the face of systemic discrimination, stigma and lack of access to culturally competent health care, the LGBT community experiences significant health disparities, including high rates of mental illness. LGBT individuals are more likely to experience depression, anxiety and suicidal behavior and ideation. For example, the 2011 National Transgender Discrimination Survey reported that 41 percent of transgender respondents had previously attempted suicide—a stark contrast to the national suicide attempt rate of 1.6 percent. Studies have also consistently shown that lesbian, gay and bisexual adults face an increased risk of suicidal ideation and attempts, with their lifetime prevalence of suicide attempt estimated to be between two and four times higher than that of their heterosexual counterparts. These indications of mental health outcomes suggest that LGBT people face higher rates of certain mental health conditions, and may therefore be disproportionately impacted by H.R. 2646.

As currently written, this bill could also apply to a significant number of transgender people regardless of whether they are experiencing an ongoing mental health crisis. H.R. 2646 applies to “individuals with serious mental illness,” defined as individuals whose conditions meet diagnostic criteria under the DSM-5 and substantially interfere with a major life activity. A natural reading of this definition would include gender dysphoria, a DSM-5 diagnosis applicable to many (though not all) transgender people, when it is

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1 Institute of Medicine, The Health of Lesbian, Gay, Bisexual and Transgender People: Building a Foundation for Better Understanding 14 (2011) (reporting that LGBT people “face a profound…set of additional health risks due largely to social stigma,” including mental health risks). H.R. 2646 defines “serious mental illness” to include many individuals with developmental disabilities such as autism, which has also been observed at significantly higher rates among transgender people. See, e.g., Vickie Pasterski, Liam Gilligan & Richard Curtis, Traits of Autism Spectrum Disorders in Adults with Gender Dysphoria, 43 Archives of Sexual Behavior 347 (2014); Annelou L. C. de Vries et al., Autism Spectrum Disorders in Gender Dysphoric Children and Adolescents, 40 J. Autism & Developmental Disorders 930 (2010).

2 See, e.g., Institute of Medicine, supra note 1, at 190-198.


4 Ann P. Hass et al., Suicide and Suicide Risk in Lesbian, Gay, Bisexual, and Transgender Populations: Review and Recommendations, 85 J. Homosexuality 10, 18 (2011); see also Institute of Medicine, supra note 1, at 147.

severe enough to interfere with a major life activity.\textsuperscript{6} We are concerned that the bill, if enacted, could be interpreted to authorize the infringement of transgender individuals’ medical privacy or decision-making power based on their diagnosis of gender dysphoria, or allow health care providers to disclose treatments connected with gender dysphoria (such as hormone therapy, surgical procedures or changes in social roles) regardless of whether they are directly relevant to an ongoing mental health crisis.

**Infringements on privacy and decision-making power may endanger the wellbeing of LGBT individuals.**

H.R. 2646 would create a special exception to the confidentiality protections established by HIPAA and FERPA that singles out people with psychiatric and developmental disabilities. The bill would exclude such individuals by authorizing health care providers to disclose critical information about an individual’s diagnosis, treatment plan and medications to family members, with almost no meaningful and objective safeguards against abuse or misapplication of the rule. Under this bill, an individual would have no right to identify the appropriate caregivers who should be involved in their care or choose which family members are given access to their medical information.

For many LGBT individuals, this erosion of privacy can have counterproductive and dangerous consequences. While the number of supportive families has steadily grown, family members of many LGBT individuals continue to struggle to understand or accept their sexual orientation or gender identity. For example, 57% of transgender respondents in a national study reported experiencing family rejection because of their gender identity.\textsuperscript{7} Family rejection can exacerbate an individual’s mental health concerns and place them in harmful conditions: they may have family cut off contact with them, be kicked out of their homes, be cut off from financial support, or be subjected to abuse and violence.\textsuperscript{8}

Consequently, many LGBT individuals choose to delay coming out to their families or avoid coming out at all, and may, for example, enter into same-sex relationships or begin transitioning without their family’s knowledge. This bill could potentially strip many LGBT individuals of the power to decide whether, when or how to come out to their families. For example, the bill could allow a mental health professional or paraprofessional to disclose to unsupportive family members a transgender individual’s diagnosis of gender dysphoria, their treatment plan, and any related medications, such as hormone therapy, that they take to treat their gender dysphoria. Disclosing this information against a transgender individual’s consent can wreak havoc on their lives at a time when they are particularly vulnerable and empower misguided or even abusive attempts by their families to interfere with their transition-related care.

**H.R. 2646 can force LGBT people into treatment that is ineffective, harmful or discriminatory.**

\textsuperscript{6} AM. PSYCHIATRIC ASS’N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 451 (5th ed. 2013). Gender dysphoria is the diagnosis for clinically significant distress arising out of the incongruence between one’s experienced gender and assigned gender. Many, though not all, transgender people have a diagnosis of gender dysphoria. For many transgender people, having a diagnosis of gender dysphoria is necessary or important for completing certain steps in their transition: it is commonly required for transgender people who need to undergo medical treatments such as hormone therapy and surgical procedures and is a precondition of insurance coverage of transition-related care. Transgender people sometimes rely on the diagnosis for non-medical components of transition, such as updating identification documents to reflect their gender or obtaining necessary accommodations at their workplace or school.

\textsuperscript{7} NAT’L. LGBTQ TASK FORCE & NAT’L CTR. FOR TRANSGENDER EQUALITY, supra note 3, at 88.

\textsuperscript{8} For example, 40% of transgender respondents in a 2011 survey reported that family members refused to speak with them due to their gender identity and one in five experienced violence at the hands of a family member because of their transgender identity or gender nonconformity. \textit{Id.} at 94, 100.
H.R. 2646 would condition huge block grants upon states enacting particular types of Involuntary Outpatient Commitment (IOC) statutes, under which a court can order an individual to follow a judge’s treatment plan, such as taking specific medications, attending medical appointments or refraining from associating with certain individuals.

We believe that the expanded reliance on coercive treatment is an inappropriate solution to the problems in our mental health system, in part because it is grounded in the assumption that available mental health services are likely to be nondiscriminatory, affirming and effective—an assumption that does not hold true for much of the LGBT community. Many LGBT people struggle to find affirming mental health care that understands their unique needs and respects their gender identities or sexual orientations. For example, transgender patients frequently find that mental health providers lack a basic understanding of needs related to gender dysphoria and fail to provide them with the care that they need. In many cases, mental health professionals have reacted to their patients’ gender identity or sexual orientation with hostility, turned them away, subjected them to harassment and abuse, and even traumatized them through conversion therapy or other discredited attempts to change their gender identity. The expansion of involuntary outpatient commitment may be particularly harmful for LGBT people of color: studies suggest that people of color are disproportionately admitted to IOC programs, and face a range of barriers to culturally competent and nondiscriminatory care. This problem may be compounded by the fact that many IOC statutes rely on police to enforce court orders and lead to more contacts with the criminal justice system.

When so much of the available care is based on an insufficient understanding of the needs of LGBT individuals, or is discriminatory or actually harmful, it is critical that LGBT people have as much control as possible over their mental health treatment and retain the ability to opt out of hostile or unsafe therapy settings. With few effective safeguards to protect vulnerable individuals in the mental health system, programs that strip LGBT people of control over their health care are often unnecessary, ineffective and potentially dangerous.

**H.R. 2646 limits advocacy and research critical for LGBT people.**

H.R. 2646 would hamstring the civil rights and nondiscrimination protections of the Protection and Advocacy for Individuals with Mental Illness (PAIMI) program, the largest network of legal service providers for Americans with disabilities. PAIMI currently addresses thousands of complaints each year about abuse, neglect and civil rights violations in the provision of mental health care. This bill would require PAIMI agencies to focus exclusively on protecting individuals from abuse and neglect and prevent them from investigating and seeking remedies for civil rights violations. In light of the rampant discrimination and civil rights violations that LGBT and other individuals with disabilities still face in medical settings, this severe restriction on PAIMI’s jurisdiction can deny them access to advocacy services essential to their ability to obtain safe and lawful treatment.

H.R. 2646 further intends to eliminate SAMHSA, which has been an important resource for advancing the behavioral health and wellness of individuals with mental illness, including the LGBT population, for over 24 years. By replacing SAMHSA with an Assistant Secretary for Mental Health and Substance Use Disorders, a portfolio with a dramatically narrower mandate, H.R. 2646 would end support for many public health initiatives addressing the full range of LGBT health needs and concerns.

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9 Id. at 76 (reporting that 50 percent of respondents needed to educate their providers about transgender care).
10 Id. at 73-74. For example, 28 percent of respondents in the 2011 National Transgender Discrimination Survey reported being verbally harassed in medical settings, 2 percent were physically assaulted in a doctor’s office, and 19 percent were refused treatment entirely.
We applaud Members of Congress for their recognition of the urgent need to reform our mental health system: millions of Americans are living with mental health conditions without access to competent, non-stigmatizing and affordable care. **H.R. 2646, however, would do more harm than good.** It perpetuates stigmatizing stereotypes about people with psychiatric and developmental disabilities and would strip them of civil rights protections for which disability justice advocates have fought for decades, with particularly dangerous consequences for vulnerable populations such as LGBT communities.

The undersigned organizations therefore stand with numerous other social justice organizations to oppose H.R. 2646, and we encourage you to join a growing number of your colleagues in doing the same.

We welcome the opportunity to discuss the impact of H.R. 2646 on members of the LGBT community.

For more information, please contact:

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Sincerely,

American Civil Liberties Union

BiNet USA

Gay & Lesbian Advocates & Defenders

National Black Justice Center

National Center for Lesbian Rights

National Center for Transgender Equality

National LGBTQ Task Force Action Fund

National Queer Asian Pacific Islander Alliance

Queerability

Transgender Law Center