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Planned Parenthood of New York City

December 21, 2015

Caroline J. Downey, General Counsel, DHR  
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Bronx, New York 10458

Comments submitted electronically to [cdowney@dhr.ny.gov](mailto:cdowney@dhr.ny.gov)

**Comments on the Proposed Regulations Governing Protections for Trans & Gender-Nonconforming (TGNC) New Yorkers**

Dear Ms. Downey;

Thank you for the opportunity to comment on the proposed regulations governing protections for trans and gender-nonconforming (TGNC) New Yorkers.

For almost a century, Planned Parenthood of New York City (PPNYC) has offered high-quality, affordable sexual and reproductive health care services to New York City's residents of all ages. Each year, PPNYC provides high-quality, trusted and personalized sexual and reproductive health care to nearly 50,000 patients at our five health centers located in all five boroughs of New York City. PPNYC provides sexual and reproductive health services including birth control; emergency contraception; gynecological care (including cervical and breast cancer screenings); colposcopy; reproductive health exams for all genders; testing, counseling, and treatment for sexually transmitted infections; the HPV vaccine; HIV testing and counseling; pregnancy testing, options counseling (including adoption) and abortion. As one of the most trusted health care providers in New York City, we pride ourselves on the culturally-competent, confidential care we provide to all people, regardless of gender identity, gender expression, immigration status or ability to pay.

We applaud the Division of Human Rights for taking action to ensure that TGNC New Yorkers are adequately protected under the law. As a trusted safety net provider, we understand the realities so many TGNC New Yorkers face as they struggle with numerous barriers to accessing care and living healthy lives. Transgender New Yorkers often face discrimination, lack of insurance coverage, provider insensitivity, and lack of awareness of available resources that prevent them from receiving the services they need. Inequities and discrimination in the provision of health care often have lasting impacts on other areas of a person's life as well. As such, we strongly support the proposed regulations that would clarify that the Human Rights Law prohibits discrimination based on a person's gender identity, gender expression, transgender status, and gender dysphoria diagnosis.<sup>1</sup> The proposed statewide regulations would ensure clear protections in housing,

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<sup>1</sup> 37 N.Y. Reg. 21 (Nov. 4, 2015).

employment, access to credit, education and public accommodation; areas that we know are all barriers to health care for many TGNC New Yorkers, often leading to disparate health outcomes.

New York State currently has no legal protections in place to protect against a person being fired, harassed, evicted, or denied public services simply for being transgender or gender-non-conforming. PPNYC is keenly aware that without these protections, such discrimination is pervasive. The 2015 LGBT Health and Human Services Needs Assessment found that nearly one in three transgender and gender-nonconforming New Yorkers were fired because of their gender identity, and 42% reported being not hired simply because of who they are.<sup>2</sup> This discrimination extends to public spaces as well, making it difficult for TGNC New Yorkers to feel safe seeing a physician, interacting with the police, or even shopping at local businesses. It is unacceptable that facilities such as doctors' offices, hospitals and businesses are within their right to deny service, provide unequal treatment or harass transgender individuals because of their gender identity or expression.

The proposed regulations are urgently needed to address the persistent and widespread discrimination transgender and gender non-conforming New Yorkers face. Without protections to secure housing and employment, the economic and social cost of health care rises dramatically, and access to affordable services becomes that much more difficult. Nationwide, almost one in five transgender individuals report being denied housing as a result of their gender identity, with the same percentage forced to live on the street at some point.<sup>3</sup> As a trusted healthcare provider, we know that not only does this discrimination make it harder for transgender individuals to have the means to access traditional medical care, but it also results in discrimination once TGNC individuals seek out care. Almost a third (28%) of transgender individuals postpone needed medical services when sick due to health care discrimination, and one in five report being denied patient care altogether.<sup>4</sup> All New Yorkers deserve the right to feel safe in accessing the health care they need.

The Division has the authority to promulgate rules to enforce the Human Rights Law, and the promulgation of Section 466.13 is in compliance with and in advancement of the Human Rights Law's public policy goals of eliminating discrimination.<sup>5</sup> In accordance with past decisions, New York courts have recognized that transgender people are protected under the categories of sex and disability in local, state and federal laws. The Human Rights Law's prohibition on sex

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<sup>2</sup> M. Somjen Frazer & Erin E. Howe, *Transgender health and economic insecurity: A report from the 2015 LGBT Health and Human Services Needs Assessment Survey*, 8 (2015) (878 respondents in the survey identified themselves as transgender and/or gender non-conforming), <http://www.prideagenda.org/sites/default/files/PDFs/TG%20health%20and%20economic%20insecurity%20report%20FINAL.pdf>.

<sup>3</sup> Jaime M. Grant et al., *Injustice at Every Turn A Report of the National Transgender Discrimination Survey* (2011) [http://www.thetaskforce.org/static\\_html/downloads/reports/reports/ntds\\_full.pdf](http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf)

<sup>4</sup> Jaime M. Grant et al., *National Transgender Discrimination Survey Report on health and health care* (2010), [http://www.thetaskforce.org/static\\_html/downloads/reports/reports/ntds\\_report\\_on\\_health.pdf](http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_report_on_health.pdf)

<sup>5</sup> *Batavia Lodge No. 196, etc. v. State Div. of Human Rights*, 35 N.Y.2d 143, 145-46 (1974).

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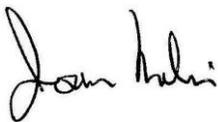
discrimination has been used to protect individuals against discrimination based on their gender identity, and has been upheld by New York state courts for over forty years.<sup>6</sup> New York courts have also recognized gender dysphoria<sup>7</sup> as a protected disability for more than ten years,<sup>8</sup> which has been used to ensure safeguards for transgender and gender non-confirming New Yorkers.

To further strengthen the proposed rules, we propose the language in section 466.13(b) be made gender-neutral, changing the language in Section (b)(2) from "him or her" to "they." Gender-neutral pronouns are more inclusive of non-binary individuals who may not identify as either male or female. We also recommend that intersex status discrimination be explicitly clarified under disability discrimination.

The proposed rules would strengthen New York's human rights law and guarantee critical protections are made available for many more New Yorkers. The human rights law provides a needed process for individuals to report harassment and discrimination with the assurance that cases will be investigated and acted upon in a timely manner. New York was the first state to enact an anti-discrimination human rights law in 1945, and we applaud the state's commitment to being a leader on human rights once again. In a city and state as diverse as ours, we have a responsibility to make sure everyone feels safe to care for themselves and live their fullest lives.

PPNYC appreciates the opportunity to provide comments on the proposed regulations. We look forward to working with the state to move closer to ensuring that the human rights of all New Yorkers are protected and uplifted.

Sincerely,



Joan Malin  
President & CEO

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<sup>6</sup> See, e.g., *Doe v. City of New York*, 976 N.Y.S.2d 360, 363-64 (Sup. Ct. 2013) (denying City's motion to dismiss plaintiff's claim that she was denied access to benefits by HASA in violation of New York City and New York State Human Rights Laws (gender and disability) when it refused to change the name and gender marker on her benefits card and intentionally referred to her by former name and male pronouns); *Hispanic Aids Forum v. Estate of Bruno*, 839 N.Y.S.2d 691, 696 (Sup. Ct. 2007) (rejecting defendants' argument that neither the New York City of State Human Rights Laws protects transgender persons); *Buffong v. Castle on Hudson*, No. 05-CV-11634, 2005 WL 4658320, at \*2 (N.Y. Sup. Ct. 2005) ("[A] transgender[] person states a claim pursuant to New York State's Human Rights Law on the ground that the word 'sex' in the statute covers transsexuals.").

<sup>7</sup> "Gender identity disorder" (GID) was the previous name of the diagnosis in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (4th ed. 1994) (DSM-IV). "Gender dysphoria" is the name in the 2013 DSM-5.

<sup>8</sup> See, e.g., *Doe v. City of New York*, 976 N.Y.S.2d 360, 363-64 (Sup. Ct. 2013) 754 N.Y.S.2d 846, 851 (Sup. Ct. N.Y. County 2003) ("GID is a disability under the State Human Rights Law"); *Wilson v. Phoenix House*, 978 N.Y.S.2d 748, 779 (Sup. Ct., Kings Cty. N.Y. 2013).