

Written Statement of
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To the
United States Senate Committee on Veterans' Affairs
Examining the Veterans Choice Program and the Future of Care in the Community
June 7, 2017

Mr. Chairman and Members of the Committee:

My name is David Stacy, and I am the Government Affairs Director for the Human Rights Campaign, America's largest civil rights organization working to achieve lesbian, gay, bisexual, transgender, and queer (LGBTBQ) equality. On behalf of our 1.5 million members and supporters nationwide, I appreciate the opportunity to submit this statement into the record. We commend the Committee for taking significant steps to ensure that veterans receive the quality, comprehensive health care they deserve. Unfortunately, the current Veterans Choice Program exempts eligible health care providers from complying with critical nondiscrimination policies and regulations designed to promote fair and equitable workplaces, including protections for LGBTQ workers. This exemption undermines the civil rights protections these policies enforce, and it undermines the creation of inclusive, culturally competent facilities.

In July 2014, President Obama signed an Executive Order amending Executive Order 11,246 issued by President Johnson, adding sexual orientation and gender identity to the list of characteristics protected from employment discrimination by federal contractors. The Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor is charged with enforcing this executive order and holding federal contractors accountable for compliance. Executive Order 11,246 prohibits companies that contract with the federal government from discriminating in employment based on sexual orientation and gender identity. Federal contractors employ more than 20 percent of the American workforce—28 million workers—and collect around \$500 billion in federal contracts every year. This Executive Order protects 11

million more American workers from discrimination based on sexual orientation and up to 14 million more workers based on gender identity.¹

Despite recent advances in equality, LGBTQ workers across the country still face discrimination on the job simply because of who they are. Currently, fewer than half of states offer explicit protections from discrimination on the basis of sexual orientation and gender identity. In the absence of uniform, nation-wide protections, many LGBTQ people who experience discrimination are left with little recourse. The OFCCP policies and regulations not only provide much needed protection for LGBTQ people working for federal contractors and subcontractors, they also set an important example of fair and effective personnel policies for private employers.

Unfortunately, the Veterans Choice Program exempts participating providers from being treated as a contractor by OFCCP.² This exemption allows for eligible providers engaging in federal contracting to avoid compliance with all civil rights policies and regulations enforced by OFCCP, including Executive Order 11,246. The implementing regulations for the executive order prescribe specific affirmative action obligations,³ data collection requirements,⁴ and posting standards designed to ensure that providers receiving federal funds are not engaging in unlawful discrimination.⁵

The exemption for eligible providers from complying with employment nondiscrimination rules applicable to federal contractors not only has a detrimental impact on the workforces affected, but sends a disturbing message that ensuring fair treatment for LGBTQ employees—as well as women, people of color, veterans, and people with disabilities—is unnecessary and inconsequential. It sets a precedent for future exemptions and represents a step backward for equal opportunity.

¹ See the Williams Institute, *Executive Order Will Protect 34 Million Federal Contractor Employees from Sexual Orientation and Gender Identity Discrimination*, (July 8, 2014), available at <https://williamsinstitute.law.ucla.edu/press/press-releases/18-july-2014/>.

² See Veterans Access, Choice, and Accountability Act, § 101(d)(3)(A).

³ 41 C.F.R. § 60-1.40 (2017).

⁴ *Id.* at § 60-1.12.

⁵ *Id.* at 60-1.42.

Any continuation or future version of the Veterans Choice Program must recognize and empower OFCCP's enforcement jurisdiction and applicability of related civil rights regulations and policies for participating providers.

I appreciate the opportunity to offer this testimony today.