

§ 1370.5 What additional non-discrimination requirements apply to these programs?

(a) No person shall on the ground of actual or perceived sex, including gender identity, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part through FVPSA.

(1) FVPSA grantees and subgrantees must provide comparable services to victims regardless of actual or perceived sex, including gender identity. This includes not only providing access to services for all victims, including male victims, of family, domestic, and dating violence regardless of actual or perceived sex, including gender identity, but also making sure not to limit services for victims with adolescent children (under the age of 18) on the basis of the actual or perceived sex, including gender identity, of the children. Victims and their minor children must be sheltered or housed together, regardless of actual or perceived sex, including gender identity, unless requested otherwise or unless the factors or considerations identified in § 1370.5(a)(2) require an exception to this general rule.

(2) No such program or activity is required to include an individual in such program or activity without taking into consideration that individual's sex in those certain instances where sex is a bona fide occupational qualification or a programmatic factor reasonably necessary to the essential operation of that particular program or activity. If sex segregation or sex-specific programming is essential to the normal or safe operation of the program, nothing in this paragraph shall prevent any such program or activity from consideration of an individual's sex. In such circumstances, grantees and subgrantees may meet the requirements of this paragraph by providing comparable services to individuals who cannot be provided with the sex-segregated or sex-specific programming, including access to a comparable length of stay, supportive services, and transportation as needed to access services. If a grantee or subgrantee determines that sex-segregated or sex-specific programming is essential for the normal or safe operation of the program, it must support its justification with an assessment of the facts and circumstances surrounding the specific program, including an analysis of factors discussed in paragraph (a)(3) of this section, and take into account established field-based best practices and research findings, as applicable. The justification cannot rely on unsupported assumptions or overly-broad sex-based generalizations. An individual must be treated consistent with their gender identity in accordance with this section.

(3) Factors that may be relevant to a grantee's or subgrantee's evaluation of whether sex-segregated or sex-specific programming is essential to the normal or safe operations of the program include, but are not limited, to the following: The nature of the service, the anticipated positive and negative consequences to all eligible beneficiaries of not providing the program in a sex-segregated or sex-specific manner, the literature on the efficacy of the service being sex-segregated or sex-specific, and whether similarly-situated grantees and subgrantees providing the same services have been successful in providing services effectively in a manner that is not sex-segregated or sex-specific. A grantee or subgrantee may not provide sex-segregated or sex-specific services for reasons that are trivial or based on the grantee's or subgrantee's convenience.

(4) As with all individuals served, transgender and gender nonconforming individuals must have equal access to FVPSA-funded shelter and nonresidential programs. Programmatic accessibility

for transgender and gender nonconforming survivors and minor children must be afforded to meet individual needs consistent with the individual's gender identity. ACF requires that a FVPSA grantee or subgrantee that makes decisions about eligibility for or placement into single-sex emergency shelters or other facilities offer every individual an assignment consistent with their gender identity. For the purpose of assigning a service beneficiary to sex-segregated or sex-specific services, the grantee/subgrantee may ask a beneficiary which group or services the beneficiary wishes to join. The grantee/subgrantee may not, however, ask questions about the beneficiary's anatomy or medical history or make demands for identity documents or other documentation of gender. A victim's/beneficiary's or potential victim's/beneficiary's request for an alternative or additional accommodation for purposes of personal health, privacy, or safety must be given serious consideration in making the placement. For instance, if the potential victim/beneficiary requests to be placed based on his or her sex assigned at birth, ACF requires that the provider will place the individual in accordance with that request, consistent with health, safety, and privacy concerns of the individual. ACF also requires that a provider will not make an assignment or re-assignment of the transgender or gender nonconforming individual based on complaints of another person when the sole stated basis of the complaint is a victim/client or potential victim/client's non-conformance with gender stereotypes or sex, including gender identity.

(b) An organization that participates in programs funded through the FVPSA shall not, in providing services, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

(1) Dietary practices dictated by particular religious beliefs may require reasonable accommodation in cooking or feeding arrangements for particular beneficiaries as practicable. Additionally, other forms of religious practice may require reasonable accommodation including, but not limited to, shelters that have cleaning schedules may need to account for a survivor's religion which prohibits him/her from working on religious holidays.

(c) No person shall on the ground of actual or perceived sexual orientation be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity funded in whole or in part through FVPSA.

(1) All programs must take into account participants' needs and be inclusive and not stigmatize participants based on actual or perceived sexual orientation.

(d) All FVPSA-funded services must be provided without requiring documentation of immigration status because HHS has determined that FVPSA-funded services do not fall within the definition of federal public benefit that would require verification of immigration status.

(e) Grantees and subgrantees should create a plan to ensure effective communication and equal access, including:

(1) How to identify and communicate with individuals with Limited English Proficiency, and how to identify and properly use qualified interpretation and translation services, and taglines; and

(2) How to take appropriate steps to ensure that communications with applicants, participants, beneficiaries, members of the public, and companions with disabilities are as effective as communications with others; and furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities, including applicants, participants, beneficiaries, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity. Auxiliary aids and services include qualified interpreters and large print materials.

(f) Nothing in this section shall be construed to invalidate or limit the rights, remedies, procedures, or legal standards available to individuals under other applicable law.

(g) The Secretary shall enforce the provisions of paragraphs (a) and (b) of this section in accordance with section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1). Section 603 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2) shall apply with respect to any action taken by the Secretary to enforce this section.