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Via Electronic Submission

August 9, 2019

Alex M. Azar II

Secretary

U.S. Department of Health and Human Services

Office for Civil Rights

Attention: Section 1557 NPRM

RIN 0945-AA11

Hubert H. Humphrey Building, Room 509F

200 Independence Avenue SW

Washington, DC 20201

Subject: Nondiscrimination in Health and Health Education Programs or Activities; Proposed Rule (Docket No. HHS-OCR-2019-0007)

Dear Secretary Azar:

The American Society of Clinical Oncology (ASCO) welcomes the opportunity to provide comments regarding the Proposed Rulemaking on Nondiscrimination in Health and Health Education Programs or Activities, 84 Fed. Reg. 27846 (June 14, 2019) (NPRM). ASCO represents more than 45,000 physicians and other healthcare professionals specializing in cancer treatment, diagnosis, and prevention. ASCO members are also dedicated to conducting research that leads to improved patient outcomes, and we are committed to ensuring that evidence-based practice for the prevention, diagnosis, and treatment of cancer are available to all Americans.

ASCO is committed to addressing the needs of sexual and gender minority populations as a diverse group at risk for receiving disparate care and having suboptimal experiences, including discrimination, throughout the cancer care continuum.¹ Sexual and gender minority (SGM), is an umbrella term that encompasses lesbian, gay, bisexual, and transgender populations as well as those

¹ Griggs, Jennifer, et al. "American Society of Clinical Oncology position statement: strategies for reducing cancer health disparities among sexual and gender minority populations." *Obstetrical & Gynecological Survey* 72.10 (2017): 598-599.

whose sexual orientation, gender identity and expressions, or reproductive development varies from traditional, societal, cultural, or physiological norms. This includes individuals with disorders or differences of sex development (DSD), sometimes known as intersex.²

ASCO is concerned that implementation of the proposed rule would substantially curtail the rights and protections of SGM patients and reduce the anti-discrimination requirements on health insurers and medical providers. Specifically, the Society is concerned that the new limited definitions and scope described in the 2019 proposed interpretation of Section 1557, as described in the proposed rule, would inhibit access to equitable cancer care, and adequate insurance coverage to meet the needs of SGM individuals affected by cancer.

The SGM population bears a disproportionate cancer burden. The disparities in cancer outcomes stem from the unique cancer risks, needs, and challenges faced by the SGM population including discrimination and gaps in quality of care.^{3,4} SGM populations exhibit low rates of uptake of cancer screening and may therefore present with late-stage disease.⁵ Because of fear of discrimination and stigmatization, SGM populations often do not disclose their sexual orientation to their health care providers, and this may create additional barriers to high-quality care.⁶

Further, transgender individuals already experience limitations in insurance coverage for transition-related care and cancer screening, given that the individual's anatomy may not be compatible with the gender listed in his or her policy.⁷ Eliminating the protections from discrimination based on gender identity, and those specifically for transgender individuals, could allow insurers to require higher cost-sharing for treatments related to a specific condition. Additionally, without the protections afforded under Sec. 1557 of the ACA, providers could refuse to treat people who are transgender or otherwise do not conform to traditional gender identities.

ASCO encourages HHS to maintain the definition defined in the 2016 Section 1557 regulation which redefined discrimination "on the basis of sex" to include gender identity. Doing so would

² National Institutes of Health, Sexual and Gender Minority Research Office. <https://dpcpsi.nih.gov/sgmro>

³ Graham, R., Berkowitz, B., Blum, R., Bockting, W., Bradford, J., de Vries, B., & Makadon, H. (2011). The health of lesbian, gay, bisexual, and transgender people: Building a foundation for better understanding. *Washington, DC: Institute of Medicine.*

⁴ Gibson, A. W., Radix, A. E., Maingi, S., & Patel, S. (2017). Cancer care in lesbian, gay, bisexual, transgender and queer populations. *Future Oncology, 13*(15), 1333-1344.

⁵ Griggs, Jennifer, et al. "American Society of Clinical Oncology position statement: strategies for reducing cancer health disparities among sexual and gender minority populations." *Obstetrical & Gynecological Survey 72.10* (2017): 598-599.

⁶ National Institutes of Health. "Strategic plan to advance research on the health and well-being of sexual and gender minorities." (2017).

⁷Griggs, Jennifer, et al. "American Society of Clinical Oncology position statement: strategies for reducing cancer health disparities among sexual and gender minority populations." *Obstetrical & Gynecological Survey 72.10* (2017): 598-599.

preserve the protections afforded to patients and healthcare consumers under the Affordable Care Act and prohibit discrimination on the basis of sexual orientation and gender identity.

Thank you for consideration of our comments. We look forward to working with the HHS to preserve the fundamental protections for patients under the Affordable Care Act. If you have any questions, please do not hesitate to contact Karen Hagerty, MD, Director of Regulatory Affairs, at 571-483-1762 or Karen.Hagerty@asco.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard A. Burris III", with a horizontal line extending to the right.

Howard A. Burris III, MD, FACP, FASCO
President
American Society of Clinical Oncology