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Centers for Medicare & Medicaid Services
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RE: Reducing Regulatory Burdens Imposed by the Patient Protection and Affordable Care Act & Improving Healthcare Choices to Empower Patients

The Fenway Institute works to make life healthier for those who are lesbian, gay, bisexual, and transgender (LGBT), as well as people living with HIV/AIDS and the larger community. We do this through research and evaluation, education and training, and policy analysis. We are the research division of Fenway Health, a federally qualified health center in Boston, MA. We would like to provide public comment regarding Section 1557 of the Patient Protection and Affordable Care Act (ACA).

We believe that the explicit inclusion of gender identity discrimination in the definition of sex discrimination in Section 1557 of the ACA is absolutely essential to reducing the health disparities affecting transgender people, and as such, it should not be revised or removed. According to Healthy People 2020, transgender people experience high rates of HIV/STD infection, violence, victimization, mental health issues and suicide, and they are less likely to have health insurance than heterosexual or LGB individuals.¹ The 2015 U.S. Transgender Survey of nearly 28,000 transgender people across the country found that 33% of respondents experienced anti-transgender discrimination in healthcare within the last year, and 23% of respondents chose to forego necessary healthcare due to fear of discrimination.² Discrimination in healthcare acts as a major barrier to reducing the health disparities that disproportionately burden the transgender community. The Section 1557 implementation rule, which explicitly prohibits discrimination based on gender identity in healthcare, is critically needed to increase access to care for transgender people and provide recourse for transgender people who experience discrimination in healthcare.

The Section 1557 rule also addressed important issues regarding insurance discrimination against transgender people. Transgender people frequently face discriminatory transgender-specific exclusions in insurance plans that allow

¹ Healthy People 2020. "Lesbian, Gay, Bisexual, and Transgender Health: Overview." Office of Disease Prevention and Health Promotion, United States Department of Health and Human Services. Accessed July 10, 2017. Available online at: <https://www.healthypeople.gov/2020/topics-objectives/topic/lesbian-gay-bisexual-and-transgender-health>.

² James SE, Herman JL, Rankin S, Keisling M, Mottet L, Anafi M. The Report of the 2015 U.S. Transgender Survey. 2016. Washington, DC: National Center for Transgender Equality

insurance companies to deny coverage for medically necessary care related to gender transition. As of August 2016, only 17 states and the District of Columbia had promulgated guidance that prohibits insurance plans from discriminating against transgender individuals.³ The Section 1557 rule prohibited insurance plans across the country from categorically excluding or limiting coverage of treatments related to gender affirmation. While the rule states that these types of anti-transgender blanket exclusions are unacceptable, the rule does not affirmatively require insurers to cover any specific treatments related to gender affirmation.

The Section 1557 rule also prohibits covered entities from denying or limiting coverage for health services to people whose gender identity differs from the sex of individuals who are ordinarily or exclusively offered those health services. For example, if insurers cover prostate exams for non-transgender men, then transgender women—who also have a prostate gland—should also be able to have prostate exams covered by insurance as well. This is essential for increasing access to life-saving medical treatments for transgender people who may have previously been unable to access these services due to financial burden. Finally, the rule also requires health care facilities to treat individuals according to their gender identity, which includes access to public restrooms consistent with their gender identity.

Given the health disparities that affect the transgender population, it is vital that the federal government take steps to ensure equal access to healthcare for transgender people. The Section 1557 rule was a critical step forward in protecting transgender people, who experience widespread discrimination in healthcare. In order to make meaningful progress in reducing the health disparities that affect transgender people and create more equitable healthcare for all, we urge the federal government to maintain the explicit prohibition of gender identity discrimination as a form of sex discrimination in the Section 1557 rule.

In regards to the specific questions from the RFI, the Section 1557 rule is essential for empowering patients, promoting consumer choice, stabilizing the insurance market, and enhancing affordability. The gender identity nondiscrimination provision of Section 1557 helps empower transgender consumers who previously faced discriminatory exclusions that discouraged enrollment and limited consumer choice. The Section 1557 rule helps improve market stability by providing a level playing field for insurers, clarity and consistency in the requirements they need to follow, and an incentive for uninsured individuals to obtain coverage by eliminating discriminatory policies across the board. Revising or removing the Section 1557 rule would undermine affordability for consumers when they or their dependents have serious medical needs that are excluded under discriminatory benefit designs, or face other discriminatory treatment. In addition, studies have shown that eliminating transgender exclusions has no effect on medical expenditures or premiums and can provide long-term savings. Lastly, the gender identity nondiscrimination

³ Movement Advancement Project. *Healthcare Laws and Policies: Private Insurance*. 2016. http://www.lgbtmap.org/equality-maps/healthcare_laws_and_policies

provision of Section 1557 has not unnecessarily interfered with the regulatory authority of the states. All people, including transgender people, should have equal access to healthcare free from discrimination no matter what state they live in. The Section 1557 rule provides the minimum federal standards that consumers across the country should have in order to access nondiscriminatory healthcare.

We thank you for this opportunity to provide comment.

Sincerely,

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