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October 3, 2022

Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Re: Nondiscrimination in Health Programs and Activities, RIN: 0945–AA17

Dear Secretary Becerra:

On behalf of AMGA, we appreciate the opportunity to comment on the Nondiscrimination in Health Programs and Activities proposed rule (RIN: 0945–AA17). The proposed rule addresses Section 1557 of the Affordable Care Act (ACA), which prohibits discrimination on the basis of race, color, national origin, sex, age, or disability in certain health programs and activities.

Founded in 1950, AMGA represents more than 440 multispecialty medical groups and integrated delivery systems, representing about 175,000 physicians who care for one in three Americans. Our member medical groups work diligently to provide high-quality, cost-effective, patient-centered medical care. Our members are on the forefront of population health management and the transition to value-based care. As part of those efforts, AMGA providers utilize clinical algorithms, among other tools, to provide holistic care person-centered care to patients.

Healthcare algorithms can guide clinical decisionmaking both at the point of care and as part of resource allocation and healthcare management. These algorithms often are included in a variety of healthcare decision tools, including clinical guidelines, pathways, clinical decision support programs in electronic health records (EHRs), and operational systems. Providers may use algorithms for a variety of purposes, including screening, risk prediction, diagnosis, prognosis, treatment planning, and allocation of resources. While originally based on statistical techniques, artificial intelligence and machine learning are increasingly a part of clinical algorithms.

AMGA shares the commitment to eliminating discrimination in healthcare, including in the use of clinical decision support tools. AMGA also agrees with the U.S. Department of Health and Human Services (HHS) that providers should not replace or substitute clinical judgement with clinical algorithms. AMGA believes that HHS should consider the overall impact to patients and providers before instituting a final rule. As part of the proposed rule, HHS is seeking comment

on several areas of discrimination in healthcare. For example, HHS is seeking comment on the following:

- What types of clinical algorithms are being used in covered health programs and activities
- How such algorithms are being used by covered entities
- Whether they are more prevalent in certain health settings
- When clinical algorithms and variables based on protected grounds under Section 1557 are useful (or not);
- What mechanisms are in place or should be in place to detect, address, and remediate possible discriminatory effects of their usage.

HHS also is requesting comments on “how to identify and mitigate discrimination resulting from the usage of clinical algorithms and other forms of automated decision -making tools and models.”

AMGA appreciates that HHS is seeking input on these key issues and believes that there is work to be done to ensure that discriminatory practices are reduced and ceased. AMGA believes that HHS should take careful consideration before finalizing this rule, as the Department may want to consider the overall impact of clinical algorithms on the healthcare system at a more granular level. Therefore, AMGA recommends that HHS use the feedback provided in the proposed rule to inform additional stakeholder engagement sessions. By working with the provider community to develop a regulatory framework, all relevant stakeholders can engage in discussion on developing policies and best practices to prevent inadvertent discrimination, while also acknowledging the operational challenges that providers may face in implementing any changes. As such, more information on the prevalence of clinical algorithms and how they are used is needed before finalizing this rule.

Thank you for your consideration of these comments. AMGA stands ready to work with HHS ensure clinical algorithms support providers and their patients without inadvertently contribution to healthcare disparities. Should you have any questions, please do not hesitate to contact Darryl M. Drevna, senior director of regulatory affairs, at ddrevna@amga.org or 703.838.0033 ext. 339.

Sincerely,



Jerry Penso, M.D., M.B.A.
President and Chief Executive Officer
AMGA