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Submitted electronically at www.regulations.gov

U.S. Department of Health and Human Services
Office of Civil Rights
Hubert Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

Re: Notice of Proposed Rulemaking, Nondiscrimination in Health Programs and Activities, RIN 0945-AA02

The Association of American Medical Colleges (AAMC) thanks the Department of Health and Human Services (HHS) and the Office of Civil Rights for the opportunity to comment on its notice of proposed rulemaking (NPRM), *Nondiscrimination in Health Programs and Activities*, 80 *Fed Reg* 54172 (September 8, 2015) related to nondiscrimination in health programs and activities. The AAMC is a not-for-profit association representing all 144 accredited U.S. medical schools, 400 major teaching hospitals and health systems, including 51 Department of Veterans Affairs medical centers, and 90 academic and scientific societies. Through these institutions and organizations, the AAMC represents 148,000 faculty members, 83,000 medical students, 115,000 resident physicians, and thousands of graduate students and post-doctoral trainees.

AAMC strongly supports HHS' extension of nondiscrimination protections to transgendered populations and its strengthening of protections for individuals with disabilities and limited English proficiency. All three of these populations experience significant inequities in health care access and utilization as well as differential morbidity and mortality as a result of those barriers and other social factors including bias, both implicit and explicit. Because of these enduring health and health care inequities, AAMC congratulates HHS on its application of these provisions to all health programs that receive any amount of Federal assistance from any Federal agency. Such broad application will help ensure members of these vulnerable groups will likely be protected against discrimination at the majority of locations where they seek care or avail themselves of health promoting activities.

AAMC shares HHS' support for banning discrimination on the basis of sexual orientation but has concerns regarding the exclusion of lesbians, gays and bisexuals (LGB) from the definition of "sex" proffered for protection by the current NPRM. The AAMC understands that under current law there is no consensus on whether LGB populations are already protected under extant Federal nondiscrimination laws. However, the health and health care disparities from which

sexual minorities suffer as well as the biases they face within the health care system point to the importance of explicitly including lesbians, gays and bisexuals as groups protected against discrimination in Federally-funded health programs and activities.

A 2011 Institute of Medicine (IOM) report highlighted the lack of research focused on the health and well-being of LGB individuals.¹ However, evidence of health and health care inequities affecting these populations exists. Recent epidemiologic literature shows lesbians are more likely than heterosexual women to be overweight or obese and have greater risk of type 2 diabetes, coronary heart disease, stroke, and breast and colon cancer.^{2,3} Research also shows that gay men have a higher prevalence of tobacco use, human papillomavirus infection and mental health problems compared with their heterosexual peers.^{4,5} Bisexual women are more likely to have an eating disorder than heterosexual women.⁶ Additionally, a report by the New Mexico Health Department found that bisexual men and women reported higher rates of suicide attempts, depression, and life dissatisfaction than their heterosexual counterparts.⁷

These health disparities are exacerbated by barriers to health care LGB populations face including homophobia within the healthcare system, fear of discrimination, hostile clinical environments, implicit and explicit bias, and perceived stigma.⁸ Studies have shown that sexual minority women are less likely than heterosexual women to report lifetime or routine Pap tests and other preventive health services due to the fear of discrimination.^{9,10} In a 2010 study of physician experiences caring for LGB patients, 15% of responding physicians had witnessed discriminatory care of LGB patients and close to 20% had witnessed disrespectful behavior toward a partner of a LGB patient.¹¹ A recent study noted that implicit and explicit provider bias against LGBT individuals exists and does influence quality of care. The study showed that nearly half of 2,088 first year medical student survey respondents expressed explicit bias and

¹ *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding*. Washington DC: National Academy of Sciences.; 2011.

² Cochran SD, Mays VM. Risk of breast cancer mortality among women cohabiting with same sex partners: findings from the National Health Interview Survey, 1997-2003. *J Womens Health (Larchmt)* 2012;21(5):528-33.

³ Lim FA, Brown DVJ, Justin Kim SM. CE: Addressing Health Care Disparities in the Lesbian, Gay, Bisexual, and Transgender Population: A Review of Best Practices. *AJN The American Journal of Nursing*. 2014;114(6):24-34.

⁴ Operario D, Gamarel KE, Grin BM, et al. Sexual Minority Health Disparities in Adult Men and Women in the United States: National Health and Nutrition Examination Survey, 2001–2010. *Am J Public Health*. 2015/10/01 2015;105(10):e27-e34.

⁵ Balsam KF, Beadnell B, Riggs KR. Understanding Sexual Orientation Health Disparities in Smoking: A Population-Based Analysis. *American Journal of Orthopsychiatry*. 2012;82(4):482-493.

⁶ Schick V, Dodge B. Introduction to the Special Issue: Bisexual Health: Unpacking the Paradox. *Journal of Bisexuality*. 2012/04/01 2012;12(2):161-167.

⁷ VanKim NA, Padilla JL New Mexico's progress in collecting lesbian, gay, bisexual, and transgender health data and its implications for addressing health disparities. Albuquerque, NM: New Mexico Department of Health, Chronic Disease Prevention and Control Bureau; 2010 Apr.

⁸ *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding*. Washington DC: National Academy of Sciences.; 2011.

⁹ Charlton, B. M., Corliss, H. L., Missmer, S. A., Frazier, A. L., Rosario, M., Kahn, J. A., & Austin, S. B. (2011). Reproductive Health Screening Disparities and Sexual Orientation in a Cohort Study of U.S. Adolescent and Young Adult Females. *The Journal of Adolescent Health : Official Publication of the Society for Adolescent Medicine*, 49(5), 505–510. <http://doi.org/10.1016/j.jadohealth.2011.03.013>

¹⁰ Diamant AL, Wold C, Spritzer K, Gelberg L. Health behaviors, health status, and access to and use of health care: a population-based study of lesbian, bisexual, and heterosexual women. *Arch Fam Med*. Nov-Dec 2000;9(10):1043-1051.

¹¹ Sabin JA, Riskind RG, Nosek BA. Health Care Providers' Implicit and Explicit Attitudes Toward Lesbian Women and Gay Men. *Am J Public Health*. 2015/09/01 2015;105(9):1831-1841.

81.5% demonstrated implicit bias against gay and lesbian individuals.¹² Furthermore, among a sample of heterosexual health care providers, research shows implicit preferences favor heterosexuals rather than lesbians or gays.¹³ In an effort to address this significant body of literature documenting the lack of culturally competent care for and biases against sexual and gender minorities, AAMC released in 2014 medical education guidelines to improve health care for people who are LGBT, gender nonconforming, or born with differences of sex development.¹⁴

Given these documented health and health care inequities and evidence of discrimination, and implicit and explicit biases against lesbians, gays and bisexuals, **AAMC strongly urges HHS to explicitly extend protections to lesbian, gay and bisexual populations against discrimination in any health program or activity funded to any extent by the Federal government.**

In a similar vein, AAMC has concerns about the exclusion of individuals living with HIV and AIDS from the definition of “sex” which delineates groups extended nondiscrimination protections by the NPRM. Persons living with HIV and AIDS are more likely to report receiving lower quality health care, more negative demeanor from providers, patient avoidance and treatment denial.^{15,16} A 2010 survey and related report by Lambda Legal found 19 percent of respondents living with HIV and AIDS reported having been denied care outright, 36 percent reported health care professionals refused to touch them or used excessive precautions, and nearly 26 percent felt blamed for their own health status.¹⁷ **AAMC strongly urges HHS to include persons living with HIV and AIDS among groups protected against discrimination based on sex for all health programs and activities funded to any extent by the Federal government.**

We would be pleased to further discuss these comments and answer any questions. Please contact me or my colleagues Philip M. Alberti, Ph.D. (palberti@aamc.org) or Ivy Baer, J.D. (ibaer@aamc.org) with any questions about these comments.

Sincerely,



Ann C. Bonham, Ph.D.
AAMC Chief Scientific Officer

¹² Burke SE, Dovidio JF, Przedworski JM, et al. Do Contact and Empathy Mitigate Bias Against Gay and Lesbian People Among Heterosexual First-Year Medical Students? A Report From the Medical Student CHANGE Study. *Academic Medicine*. 2015;90(5):645-651.

¹³ Sabin JA, Riskind RG, Nosek BA. Health Care Providers' Implicit and Explicit Attitudes Toward Lesbian Women and Gay Men. *Am J Public Health*. 2015/09/01 2015;105(9):1831-1841.

¹⁴ Association of American Medical Colleges, 2014 *Implementing Curricular and Institutional Climate Changes to Improve Health Care for Individuals Who Are LGBT, Gender Nonconforming, or Born with DSD*, Washington DC.

¹⁵ Reilly KH, et al: Experiences of Discrimination and HIV Risk Among Men Who Have Sex With Men in New York City. *Am J Mens Health* 1557988315575998, first published on March 17, 2015

¹⁶ Naughton, J. and P. Vanable (2013). HIV Stigmatization Among Healthcare Providers: Review of the Evidence and Implications for HIV Care. Stigma, Discrimination and Living with HIV/AIDS. P. Liamputtong, Springer Netherlands: 97-114.

¹⁷ When Health Care Isn't Caring: Lambda Legal's Survey of Discrimination Against LGBT People and People with HIV (New York: Lambda Legal, 2010). Available at www.lambdalegal.org/health-care-rep