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October 30, 2023

The Hon. Cathy McMorris Rodgers, Chair
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

The Hon. Frank Pallone, Ranking Member
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

The Hon. Bernie Sanders, Chairman
Cmte. on Health, Education, Labor & Pensions
United States Senate
Washington, DC 20510

The Hon. Bill Cassidy, MD, Ranking Member
Cmte. on Health, Education, Labor & Pensions
United States Senate
Washington, DC 20510

Dear Chair McMorris Rodgers, Ranking Member Pallone, Chairman Sanders, and Ranking Member Cassidy:

On behalf of the below listed members of the Health Coalition on Liability and Access (HCLA), a diverse coalition of medical professionals and associations working to improve timely access to care and reduce medical lawsuit abuse, we are writing to express our concerns about the Department of Health & Human Services' Office of Civil Rights' (OCR) recent Proposed Rule regarding Nondiscrimination in Health Programs and Activities. Specifically, we caution against the reinterpretation of Section 1557 of the Affordable Care Act as included in the proposed rule.

Our coalition has long supported efforts to enhance patient safety throughout the United States, and we strongly encourage efforts to reduce and eliminate systemic issues which could result in a lower quality of care for any population. As such, we support the principles behind OCR's effort to address potential bias stemming from the use of clinical algorithms but adamantly oppose the use of threatened liability targeting health professionals as the means for achieving that goal.

Throughout the notice of proposed rulemaking, OCR appropriately cautions against over reliance on clinical algorithms. Such warnings are certainly constructive as our health system tackles many new questions arising from the use of new health care technologies. We acknowledge that health professionals should take steps to ensure that the use of such tools does not replace their professional judgment and that all relevant updates and enhancements to such tools are utilized to minimize inadvertent negative outcomes.

The threat of liability under the proposed rule, however, will not encourage a suitable level of caution but instead will discourage the use of clinical algorithms altogether. This is because the proposed rule allows for an unlimited period of potential liability stemming from the possibility that alleged biases may not be uncovered for years, yet health professionals could still be found liable for biases for which they were neither responsible nor even aware. Encouraging restraint in the use of clinical algorithms is appropriate, but discouraging their use completely, as the proposed rule will do, potentially denies important

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improvements in health care to the very populations the rule intends to help. Such a result will not benefit any stakeholders in our health system.

As you move forward with your respective committees' important efforts to address health care issues in the United States, including oversight of OCR's proposed rule regarding Section 1557, we thank you for giving our views your full consideration. If there is any further way we may be of assistance on this, or other matters under your purview, we would be more than willing to do so.

Sincerely,

American Academy of Otolaryngology- Head & Neck Surgery
American Association of Neurological Surgeons
American Association of Orthopaedic Surgeons
American College of Emergency Physicians
American Health Care Association
American Medical Association
American Society of Anesthesiologists
American Society of Plastic Surgeons
American Tort Reform Association
American Urological Association
Congress of Neurological Surgeons
COPIC
Illinois State Medical Society
ISMIE Mutual
Medical Assurance Company of Mississippi
Medical Professional Liability Association
MIEC
MLMIC Insurance
National Association of Spine Specialists
Physicians Insurance A Mutual Company
ProAssurance
SVMIC
Texas Medical Liability Trust
The Doctors Company