



AMERICAN PUBLIC HEALTH ASSOCIATION
For science. For action. For health.

January 8, 2019

The Honorable Alex M. Azar, II
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Re: Comments in Response to Patient Protection and Affordable Care Act, Exchange Program Integrity NPRM, CMS-9922-P

Dear Secretary Azar and Administrator Verma:

On behalf of the American Public Health Association, a diverse community of public health professionals that champions the health of all people and communities, I write to strongly oppose the Department of Health and Human Services' proposed rule, "Patient Protection and Affordable Care Act, Exchange Program Integrity, CMS-9922-P," which is a blatant attempt to eliminate insurance coverage of abortion in the Affordable Care Act marketplaces.

The ACA allows insurance plans participating in ACA marketplaces to continue deciding for themselves whether or not to provide abortion as part of a comprehensive health insurance plan. But Section 1303 of the ACA sets out "special rules" that an insurance plan participating in the ACA marketplace must follow in order to cover abortion beyond the limited exceptions allowed under the federal Hyde Amendment.¹ These rules permit issuers state insurance commissioners, and the federal government to continue providing insurance coverage of abortion as part of comprehensive plans offered in the marketplace. But the proposed rule imposes onerous burdens on both issuers and consumers that could eliminate abortion coverage in many parts of the country. This is a violation of congressional intent. Given that abortion is a common procedure – one in four women in the U.S. will have an abortion by age 45² – by pushing abortion further out of reach, the proposed rule, threatens the health, well-being and economic security of more than

¹ Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148, § 1303 (2010), *amended* by Health Care and Education Affordability Act, Pub. L. No 111-152 (2010). *See also* "Hyde Amendment" Dep't of Defense and Labor, Health and Hum. Serv., and Educ. Appropriations Act, 2019, Pub. L. No. 115-245, §§ 506-507.

² Jones RK and Jerman J, *Population group abortion rates and lifetime incidence of abortion: United States, 2008–2014*, AM. JOURNAL OF PUBLIC HEALTH, 2017, doi:10.2105/AJPH.2017.304042.

a million individuals across the country. For these reasons, we call on HHS to withdraw the proposed rule in its entirety.

The proposed rule would impose unnecessary and onerous burdens on insurers that would force them to drop abortion coverage in the marketplace – a result that would be contrary to congressional intent.

The proposed rule would impose burdensome and costly requirements on insurers with the goal of forcing them to drop abortion coverage. Specifically, the proposed rule would force insurers to allocate additional, significant administrative resources towards issuing and processing payments from multiple instruments from each subscriber, needlessly raising administrative and personnel costs.³ Issuers have repeatedly expressed their opposition to such requirements for these reasons. For example, America’s Health Insurance Plans has stated that it does “not support any requirements to itemize the cost of, or separately bill for specific benefits that are incorporated in a comprehensive benefit plan.”⁴ That is because such requirements go against standard practice in the insurance industry.

Given the costly and significant administrative burdens that the proposed rule would impose, many insurance companies could be forced to drop abortion coverage altogether. This appears to be the goal of the proposed rule. Just last year, HHS issued guidance reaffirming longstanding regulations implementing Section 1303, but this proposed rule is a complete reversal that would create a new, expensive, and purposely onerous framework for insurers that want to continue covering abortion in the marketplace. The fact that HHS is proposing to give insurers such a short time period to implement the new regime is further evidence that the proposed rule is meant to coerce insurers into dropping abortion coverage. If finalized, this rule would further stigmatize abortion, eliminate insurance coverage of abortion and restrict access to legal and safe abortions.

Furthermore, the proposed rule violates congressional intent. Congress passed the Section 1303 special rules after rejecting more extreme alternatives that would have eliminated abortion coverage in the marketplace.⁵ Instead, Section 1303 makes clear that – absent a state law to the contrary – insurers offering marketplace coverage can decide for themselves whether to cover abortion. But the proposed rule’s onerous requirements will effectively take that decision away from issuers. By forcing insurers to drop coverage and eliminating abortion coverage in many parts of the country, the proposed rule would violate congressional intent regarding Section 1303.

The proposed rule will impose significant costs on consumers and lead to confusion, which could potentially jeopardize individual’s health coverage.

The proposed rule, if finalized, would impose significant costs to consumers. HHS estimates that the proposed rule will cost consumers more than \$30 million, but the actual cost would likely be

³ While the proposed rule contemplates some additional costs for insurers and consumers, the Department has likely grossly underestimated the burden this rule would impose.

⁴ America’s Health Insurance Plans (AHIP), Comment Letter on HHS Notice of Benefit and Payment Parameters for 2016 (CMS-9944-P) (Dec. 22, 2014).

⁵ See e.g. Huma Khan & Z. Byron Wolf, *Senators Defeat Anti-Abortion Amendment in Health Care Bill By 54-45*, ABC News, Dec. 8, 2009, <http://abcnews.go.com/Politics/HealthCare/senators-defeat-abortion-amendment-health-care-bill/story?id=9279079> (last visited Dec. 19, 2018).

much higher. The administration failed to account for several costs, including the cost of consumer learning regarding the proposed rule's new billing and payment requirements. Moreover, HHS fails to account for the costs insurers will likely pass onto consumers as a result of implementing these burdensome requirements. As multiple issuers have indicated, such requirements are likely to confuse consumers as well as impose unnecessary burdens on qualified health plan issuers that are likely to be "passed on to beneficiaries in the form of higher plan premiums."⁶ Such an outcome would not only undermine one of the primary goals of the ACA – to reduce health care coverage costs – but also the Administration's oft-repeated goals of "reduc[ing] administrative burdens" of the ACA and "lowering health care costs for Americans."⁷

Additionally, the requirements of the proposed rule would create consumer confusion and could put individuals at risk for having their health care coverage cancelled altogether. Requiring consumers to pay two separate bills could result in consumers failing to submit one or both payments, potentially resulting in a loss of coverage for failure to pay the full amount due. The proposed rule does not address what should happen if a consumer fails to pay, for any number of reasons, the second, smaller payment for the abortion coverage. Since the payment for the abortion coverage is not for separate coverage but rather is part of the policyholder's premium, the failure to make payments properly could be grounds for an insurer cancelling their coverage. This result would frustrate the primary goal of the ACA to make affordable health care coverage widely available.

Though abortion is a safe, legal, and constitutionally protected form of medical care in the United States, federal restrictions on insurance coverage, such as those in the proposed rule, coupled with increasing federal and state attacks on access to abortion care, often render the constitutional right meaningless. Regardless of whether someone has private or public health insurance, everyone should have coverage for a full range of pregnancy-related care, including abortion. Yet, already, too many are denied abortion coverage because of how much they earn, where they live, or how they are insured. For many, coverage for abortion care means the difference between getting the health care they need and being denied that care. The impact of such a denial can have long-term, devastating effects on a woman and her family's economic future. A study found that a woman who seeks but is denied abortion care is more likely to fall into poverty than a woman who is able to get the care she needs.⁸ Additionally, women who are denied access to an abortion have been found to suffer adverse physical and mental health consequences. For example, according to a longitudinal study that is frequently cited in peer-reviewed journals, women denied abortions are more likely to experience eclampsia, death, and other serious medical complications during the end of pregnancy, more likely to remain in relationships where interpersonal violence is present and more likely to suffer anxiety.⁹

⁶ ANTHEM, Comment Letter on HHS Notice of Benefit and Payment Parameters for 2016 (CMS-9944-P) (Dec. 22, 2014); *see also* AHIP, *supra* note 4.

⁷ DEP'T OF HEALTH AND HUMAN SERV., "Strategic Goal 1: Reform, Strengthen, and Modernize the Nation's Healthcare System," *available at* <https://www.hhs.gov/about/strategic-plan/strategic-goal-1/index.html>.

⁸ Diana Greene Foster, PhD, Sarah C. M. Roberts, DrPH and Jane Mauldon, PhD. *Socioeconomic consequences of abortion compared to unwanted birth*. Abstract from the American Public Health Association's annual meeting 2012, *available at* <https://apha.confex.com/apha/140am/webprogram/Paper263858.html>.

⁹ Univ. of California-San Francisco, Turnaway Study, <https://www.ansirh.org/research/turnaway-study>.

As discussed above, the proposed rule could result in insurers being forced to drop abortion coverage in marketplaces across the country due to the significant burdens of complying with the procedures in the proposed rule. This outcome will fall particularly hard on communities that already face barriers to health care. People of color are more likely to live in poverty and thus less likely to be able to afford abortion care (or other health care) out-of-pocket. Bans on insurance coverage for abortion put people of color and their families in untenable economic situations. Moreover, restrictions on abortion care, such as restrictions on insurance coverage of abortion, amplify existing health disparities, disproportionately harming women who already face barriers to accessing quality health care, due to their socioeconomic status, gender, sexual orientation and race. All people deserve the right to determine their reproductive future and shape their families in the way they choose. The high likelihood that many insurers would stop covering abortion if the proposed rule takes effect would disproportionately impact underserved and medically-vulnerable communities.

Conclusion

APHA has long held that equal access to the full range of reproductive services, including abortion is a fundamental right. The proposed rule imposes onerous, unnecessary burdens and costs on insurers and consumers that is targeted to force insurers to drop abortion coverage altogether. It is contrary to congressional intent regarding abortion coverage; and it will push abortion access out of reach for many. For all of these reasons, I encourage HHS to withdraw the rule in its entirety and to instead focus on implementing policies that increase access to health services. Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, reading "Georges C. Benjamin". The signature is fluid and cursive, with the first name "Georges" being the most prominent part.

Georges C. Benjamin, MD
Executive Director