

March 27, 2017

Nathaniel Dorfman
NYS Department of Financial Services
One Commerce Plaza
Albany, New York 12257

RE: New York State Department of Financial Services Proposed Rule Making: Addition of Sections 52.17(a)(36), (37), 52.18(a)(11) and (12) to Title 11 NYCRR.

Dear Mr. Dorfman,

We are grateful for the opportunity to provide comments to the Department of Financial Services (herein after the "Department") regarding the addition of Sections 52.17(a)(36), (37), 52.18(a)(11) and (12) to Title 11 New York Code, Rules & Regulations. Catholics for Choice shapes and advances sexual and reproductive ethics that are based on justice, reflect a commitment to women's well-being and respect and affirm the capacity of women and men to make moral decisions about their lives. We serve as a voice for the vast majority of Catholics who support access to comprehensive reproductive health services.

On behalf of the majority of the more than 7.1 million Catholics in New York, we applaud the Department for clarifying that insurance policies are required to include at least one form of contraception within each of the FDA's approved methods without co-payments. However, we strongly recommend these requirements be strengthened to include all forms of contraceptives and necessary counseling in order to respect the individual conscience-based decisions of New York workers and their dependents to choose the appropriate contraception for their health and their lives, and to fully meet the reproductive health needs of the men and women of New York. We support the Department's proposed rule to allow the dispensing of a 12-month supply of contraceptives, and also ask that this requirement be strengthened by eliminating limitations on accessing the 12-month supply.

Contraceptives Covered

Catholic tradition and teachings are crystal-clear about the respect, unto reverence, held for every individual's right to follow her conscience to do what she believes is right. This includes an individual's right to make moral decisions about his or her reproductive healthcare. Catholics support access to comprehensive reproductive healthcare, including access to the contraception that is right for each individual.

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The proposed rule expands contraceptive access by requiring insurance coverage for all contraceptive drugs and devices approved by the FDA, preventive care and screenings with no cost-sharing. This reflects the current federal standards that require insurers to cover at least one form of contraception within each of the 18 methods of contraception that the FDA has identified for women without co-payments.¹ Yet, this requirement still leaves many women and men without access to the birth control that is best for them. For instance, there are 33 different types of birth control pills within the oral contraceptive method of contraception, each type with varying hormonal levels and corresponding degrees of medical appropriateness for the patient. The exception process proposed allows patients to access any contraceptive without a co-payment where it is deemed medically necessary, but this is unduly burdensome on the individual and provider, causes significant delays in accessing contraception and results in gaps in contraceptive use.

Establishing a requirement that insurers cover the full range of FDA approved contraceptives would guarantee access to the contraceptive method that is medically best for each individual. Requiring all types within each method to be covered avoids the inherent delays of an exceptions process and ensures that patients in consultation with their providers can make the best conscience-based decisions about their contraception choice that is right for their health and their lives.

In addition, we recommend that the Department expand coverage to include male methods of contraception—both vasectomies and condoms—in order to respect and offer contraceptive choices for men. Both women and men have a right, individually and as sexual partners, to decide based on their own consciences and health circumstances which contraceptive method is best for them. This may include male methods of contraception, and the proposed rule should reflect equal coverage for both male and female contraception.

Limitations to Access a 12 month Supply of Contraceptives

The Catholic social justice tradition calls on us to advocate for the poor and marginalized. Barriers to reproductive healthcare access disproportionately harm those who struggle most to make ends meet and those with limited access to care, such as in rural areas. Out of respect for the dignity of all people, including the poorest and most marginalized, Catholics support affordable access to the full range of reproductive healthcare services, including contraception.

The proposed rule requires insurers to cover the dispensing of a 12 month supply of contraception after an initial three-month supply by the same provider. This enables New York residents—particularly the most

¹ 26 CFR 54.9815-2713, 29 CFR 2590.715-2713, 45 CFR 147.130; Departments of Labor, Department of Treasury, Health and Human Services, FAQs About Affordable Care Act Implementation, May 11, 2015. Available at: https://www.cms.gov/ccio/resources/fact-sheets-and-faqs/downloads/aca_implementation_faqs26.pdf (The contraceptive methods for women currently identified by the FDA include: (1) sterilization surgery for women; (2) surgical sterilization implant for women; (3) implantable rod; (4) IUD copper; (5) IUD with progestin; (6) shot/injection; (7) oral contraceptives (combined pill); (8) oral contraceptives (progestin only); (9) oral contraceptives extended/continuous use; (10) patch; (11) vaginal contraceptive ring; (12) diaphragm; (13) sponge; (14) cervical cap; (15) female condom; (16) spermicide; (17) emergency contraception (Plan B/Plan B One Step/Next Choice); and (18) emergency contraception (Ella). The FDA Birth Control Guide additionally lists sterilization surgery for men and male condoms, but the HRSA Guidelines exclude services relating to a man's reproductive capacity).

vulnerable—to have access to contraception without the burden of numerous visits to the pharmacy. However, requiring an initial three-month period and prescription from the same provider for the subsequent 12 month supply creates unnecessary barriers for women. Our respect for conscience means decisions about which birth control to use should be left to the woman in consultation with her medical provider, not driven by the intricacies of insurance coverage. At the same time, requiring the same healthcare provider to prescribe both the initial and subsequent supplies of contraception fails to reflect the reality of many individuals who cannot maintain a consistent relationship with one medical provider, who experience changes in their insurance coverage or who geographically cannot access the same healthcare facilities consistently. These restrictions will particularly harm those who are low-income, live in rural communities or already struggle to access the healthcare they need. As such, these restrictions are antithetical to our Catholic social justice tradition.

Conclusion

We applaud the Department for seeking to clarify contraceptive coverage requirements to include at least one form of contraception within each of the FDA's approved methods without co-payments and a 12 month supply of oral contraceptives. There is a great need for this proposed rule in New York. In 2014, more than half of the 4.2 million women above age 13 needed contraceptive services and supplies,² and looking at US Catholic women, 99 percent of those who are sexually active have used a form of modern contraception to which the Catholic hierarchy disapproves.³ Each and every individual deserves and needs meaningful access to contraception that reflects their health needs and their own lives. For this reason, we call on the Department to demonstrate true leadership, respect for individual conscience and a commitment to social justice for all people by expanding coverage for all FDA approved methods and to remove the existing restrictions in obtaining a prescription for a 12 month supply of oral contraception. Our Catholic faith compels us to this position and it is the right thing to do.

Sincerely,

A handwritten signature in blue ink that reads "Jon O'Brien". The signature is written in a cursive, flowing style.

Jon O'Brien
President

² Guttmacher Institute, "Contraceptive Needs and Services, 2014 Update," September 2016.

³ Beldon Russonello & Stewart, "Catholic Voters and Religious Exemption Policies: Report of a National Public Opinion Survey for Catholics for Choice, Call to Action, Dignity USA and Women's Alliance for Theology, Ethics and Ritual (WATER)," October 2014.