
IN GOOD CONSCIENCE

January 8, 2019

The Honorable Alex Azar
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS- 9922-P
Via Electronic Submission

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 majority of the more than 70 million Catholics in the United States who, as a matter of conscience, disagrees with the Catholic hierarchy on issues of reproductive health, Catholics for Choice submits this public comment in response to the Department of Health and Human Services' request for Comments on the Patient Protection and Affordable Care Act, Exchange Program Integrity NPRM, CMS-9922-P.

We strongly oppose the Department of Health and Human Services' (the "Department") Proposed Rule ("Rule"). The Rule is not designed to strengthen the integrity of subsidy payments in the individual markets but rather is a bold attempt to eliminate insurance coverage of abortion in the Affordable Care Act (ACA) marketplaces. As Catholics committed to social justice, we believe each individual should be able to access the reproductive healthcare they deem is ethical irrespective of income or insurance. All insurance plans should cover all basic health services, including birth control, abortion, prenatal care, childbirth, and postpartum care.

As written, the Proposed Rule undermines a woman's fundamental ability to make the conscience-based decisions that are best for her. It scorns the important Catholic principle of social justice by putting at further risk vulnerable communities—like low income women, rural communities, and communities of color—which Catholic teaching asks us to prioritize and protect and support. It diminishes the fundamental freedom of religion by enshrining into public law one set of religious beliefs. Rather than ensure program integrity, this Rule would exacerbate existing health disparities and undermine women's moral autonomy.

Catholics for Choice is an international nongovernment organization that shapes and advances sexual and reproductive health ethics based on the belief that every woman has the right to follow her own conscience on reproductive health matters. Our Catholic tradition requires us to respect conscience-based decisions, advocate for the poor and marginalized and respect pluralism and religious freedom.

(more)

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The Rule Interferes with Conscience-Based Decision Making

The Proposed Rule undermines a woman's fundamental ability to make conscience-based decisions that are best for her. Catholics hold a deep respect for the human dignity of all persons, and Catholic teaching demands respect for individual conscience. This Rule undermines individuals' decisions about reproductive health and whether or not to continue a pregnancy. It aims to curtail these services and ultimately only serves to interfere with an individual's ability to follow their conscience. There is no doubt that a woman is a person with rights, responsibilities and a conscience, a moral agent who must be unburdened to seek the best healthcare for herself and her family in light of her circumstances and beliefs.

The Proposed Rule would likely lead many health insurers to drop abortion coverage, placing access to abortion care out of reach for many in need and cheating many women from following their conscience to obtain the healthcare they deem necessary. The Rule would impose burdensome and costly requirements on insurers to encourage them to drop abortion coverage altogether.

Specifically, the Proposed Rule would force insurers to allocate additional, significant administrative resources towards issuing and processing payments from multiple instruments for each subscriber, needlessly increasing administrative and personnel costs. Issuers have repeatedly expressed their opposition to such requirements. For example, America's Health Insurance Plans (AHIP) 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."¹ That is because such requirements go against standard practice in the insurance industry. Given the costly administrative burdens that the Proposed Rule would impose, many insurance companies could be driven to drop abortion coverage altogether. This appears to be the Department's goal in issuing the Rule. Guidance issued just last year reaffirmed longstanding regulations implementing Section 1303, yet this Rule reflects a complete reversal by proposing a new, expensive and purposely onerous framework for insurers that want to continue covering abortion in the marketplace. The short time frame proposed by the Department for implementation is further evidence that the Rule is meant to pressure private insurers into dropping abortion coverage. In short, this Proposed Rule is just the latest in the Department's attempts to stigmatize abortion and eliminate insurance coverage of abortion.

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, interfere with a woman's God given moral agency. Restrictions, like the Rule, render her constitutional rights meaningless.

The Rule Affronts the Catholic Commitment to Social Justice

Catholics believe everyone should have coverage for a full range of pregnancy-related care, including abortion, regardless of whether someone has private or public health insurance. No one should be denied care simply because of how much money they have or how they receive insurance. The Proposed Rule jeopardizes comprehensive health coverage for the most vulnerable communities. Catholic commitment to social justice informs our dedication to improving healthcare access and outcomes—especially for the poor, members of historically marginalized groups and those with fewer resources.

¹ America's Health Insurance Plans (AHIP), Comment Letter on HHS Notice of Benefit and Payment Parameters for 2016 (CMS-9944-P) (Dec. 22, 2014).

Catholics for Choice strongly supports efforts to remedy health disparities that persist among populations, including those with lower income and financial security, those living in rural areas and those from racial and ethnic minorities. We advocate for policies that prohibit discrimination against individuals receiving healthcare services and strongly oppose practices that further entrench legacies of injustice in American society.

As Catholics, we recognize that each person possesses human dignity and the ability to serve as the primary moral authority in their life. We know that policies that create barriers to seeking reproductive healthcare disproportionately harm low-income communities and communities of color. These effects are exacerbated for individuals with limited access to healthcare, including those in rural areas or with limited choices for health insurance. Out of respect for the dignity of all people, including the poorest and most marginalized, Catholics support access to the full range of reproductive healthcare services, including abortion, without unnecessary burdens. This Rule would further burden women who already face challenges accessing healthcare services, causing additional delays and costs that will prevent them from receiving the care they need.

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.² Additionally, women who are denied access to an abortion have been found to suffer adverse physical and mental health consequences.

The Proposed Rule would likely result in insurers dropping abortion coverage in marketplaces across the country which will fall particularly hard on communities that already face barriers to healthcare. Poor women, rural women, young women and women of color are more likely to live in poverty and thus less likely to be able to afford abortion care (or other healthcare) out-of-pocket.

The time that it takes to raise funds for the abortion care they need can often result in delays in accessing abortion services, which in turn increases the cost of care. In a 2014 study, the average costs to patients for first-trimester abortion care was \$461, whereas second-trimester abortion care could cost them two to four times as much (\$860 to \$1874).³ Bans on insurance coverage for abortion, strip vulnerable populations of the dignity, autonomy and essential healthcare they need. It places them in untenable economic situations. These are the very people we as Catholics are most called upon to aid.

For those who will lose or be denied coverage under this Rule, the cost of ending a pregnancy could force them to choose between paying for rent or groceries and paying for the care they need. This goes against our call to social justice as Catholics. Abortion access is an essential component of reproductive healthcare. As a result, restrictions on access to abortion care amplify existing health disparities, disproportionately harming women who already face barriers to accessing quality healthcare, 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.

² 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>.

³ See All Above All, The Impact of Out-of-Pocket Costs on Abortion Care Access, Ibis Reproductive Health (Sept. 2016), <https://allaboveall.org/wp/wp-content/uploads/2016/09/OutOfPocket-Impact.pdf>.

The Proposed Rule Distorts the Fundamental Principle of Religious Freedom

Americans cherish the fundamental principle of religious liberty. Catholic tradition similarly calls on us to honor religious liberty, showing respect to every person's obligation and right to follow their own conscience when making important moral decisions. Both stress the importance of honoring the true sense of liberty, that which honors individual rights to both freedom of religion and the freedom from religion. Being forced to live by another's beliefs is not true religious freedom. True religious liberty does not encode into public law a particular set of religious beliefs nor does it encourage religious and moral objections claimed by institutions to displace the needs of patients. Access to comprehensive reproductive health services for every woman, regardless of where she lives or works, respects her individual rights—both of conscience and individual religious liberty.

People should be able to expect government protection for both. Rather than offer protection of these fundamental freedoms, this Rule enshrines one religious viewpoint into public law. One must ask who benefits from an arrangement that leaves women without healthcare. The answer is those conservative religious forces who seek to impose their religious views on others. This is a warping of the fundamental American promise of religious freedom. Ensuring access to comprehensive reproductive healthcare – including abortion – infringes on no one's conscience, demands no one change their religious beliefs, discriminates against no person, puts no additional economic burden on the poor, interferes with no one's medical decisions and compromises no one's health.

More than eight in ten Catholic voters (84%) support abortion in some cases. Catholic voters not only want abortion to remain legal, they largely agree that insurance policies should cover abortion. This comes as no surprise since Catholics access reproductive health services, including abortion care, at the same rate as the rest of the US population. Catholic public opinion stands firmly in favor of protecting timely, seamless access to care for all women—not additional red tape imposed by this Rule.⁴

The majority of Catholic voters support insurance coverage for abortion—whether in private or government-run plans. When Catholic voters were asked about access to abortion, they supported health insurance coverage (either public or private) for abortion in many circumstances: when a pregnancy poses a threat to the life of a woman (78 percent); when a pregnancy is due to rape or incest (71 percent); when a pregnancy poses long-term health risks for a woman (68 percent); when test results show a fetus has a severe abnormal condition (55 percent); and whenever a woman and her doctor decide it is appropriate (45 percent).⁵ Catholics believe that whether or not one might choose to have an abortion, in our free and democratic society it is critical that we stand up for freedom of conscience—including freedom for others with whom we disagree. Forcing women to give birth against their will by placing unnecessary and unfair obstacles in their way, as this Proposed Rule would surely do, runs counter to the civil liberties that are central to our society.

Conclusion: The Department Should Center Women's Moral Decision Making

The Department of Health and Human Services plays a critical role in advancing the wellbeing of Americans. Its mission as achieved “through programs and initiatives that cover a wide spectrum of activities, serving and protecting Americans at every stage of life,” is both laudable and critical.

⁴ Survey of Catholic Voters and Religious Exemption Policies in the United States, Belden and Russonello, October 2014

⁵ Survey of Catholic Voters and Religious Exemption Policies in the United States, Belden and Russonello, October 2014

This Proposed Rule is irreconcilably discordant with that mandate. Whereas increasing access to healthcare including abortion should be an essential objective, this Proposed Rule would instead deepen already existing health disparities and rob women of the ability to make important health decisions. Plainly stated, this Rule attempts to eliminate insurance coverage of abortion in the Affordable Care Act (ACA) marketplaces. Catholics for Choice wholly rejects this effort and respectfully requests the rescission of the rule.

A woman's right to moral decision making is not a commodity for political trading— it should be at the center of any promulgated rules on reproductive health from the Department. Underhanded policies that claim to benefit women's ability to obtain healthcare, but which really undermine abortion access by deliberately creating unfavorable conditions and red tape for insurers, should have no place in public law. Catholics believe that all insurance plans should cover all basic health services, including birth control, abortion, prenatal care, childbirth, and postpartum care. Each individual should be able to access the reproductive healthcare that is right for them. We implore the Department to respect the autonomy of individuals to make their own health decisions free from deceptive rules designed to hinder access to critical abortion services.

We ask that the Department rescind this Rule and instead promulgate regulations that respect the consciences of women.

Respectfully,

A handwritten signature in black ink, appearing to read "Jon O'Brien". The signature is stylized with a large, sweeping initial "J" and "O".

Jon O' Brien
President