



January 8, 2019

Emily Ames and Christine Hammer
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS-9922-P
P.O. Box 8016
Baltimore, MD 21244-8010

RE: Patient Protection and Affordable Care Act; Exchange Program Integrity CMS-9922-P,
RIN 0938-AT53

Dear Ms. Ames and Ms. Hammer:

I am writing on behalf of People For the American Way (PFAW) to offer comments on the Patient Protection and Affordable Care Act; Exchange Program Integrity proposed rule.¹ Founded in 1981 by a group of civic, educational, and religious leaders, PFAW is a progressive advocacy organization grounded in the nation's ideals of freedom, equity, opportunity, and justice. Over its history, PFAW has conducted extensive education, outreach, legislative and regulatory advocacy, and other activities to make these values a reality in the lives of all people.

PFAW and its hundreds of thousands of members nationwide strongly support the principle that standing up for gender equity is critical to achieving our vision of a vibrant democratic society that works for all of us. PFAW is thus concerned about Affordable Care Act rulemaking that has the potential to limit critical health care access for low-income women and the entire universe of Affordable Care Act exchange program enrollees. We urge the Department of Health and Human Services to withdraw the proposed rule in its entirety.

While the Affordable Care Act allows exchange program insurance providers to decide for themselves whether to provide abortion coverage as part of a comprehensive health insurance plan, Section 1303 of the Act sets out requirements that they must follow in order to cover abortion beyond the limited exceptions allowed under the Hyde Amendment.² These "special rules" inappropriately treat abortion differently from all other health services and reinforce harmful stigma surrounding abortion care. Nevertheless, they have been implemented in ways that minimize the burden and allow ongoing abortion coverage. That could change in many parts of the country under the proposed rule. This violation of congressional intent would threaten Americans' health, well-being, and economic security.

¹ <https://www.govinfo.gov/content/pkg/FR-2018-11-09/pdf/2018-24504.pdf#page=7>

² <https://www.congress.gov/111/plaws/publ148/PLAW-111publ148.pdf#page=50> amended by <https://www.congress.gov/111/plaws/publ152/PLAW-111publ152.pdf> see also <https://www.congress.gov/115/bills/hr6157/BILLS-115hr6157enr.pdf#page=138>

The proposed rule imposes unnecessary and onerous burdens on insurers that would, contrary to congressional intent, force them to drop abortion coverage.

The proposed rule goes against standard industry practice. Insurers should not be forced to allocate additional, significant administrative resources toward issuing and processing payments from multiple instruments from each subscriber, which needlessly raises their administrative and personnel costs.³ They 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.”⁴ That is because such requirements go against standard industry practice.

The goal is to force health insurers to drop abortion coverage. The Department reaffirmed longstanding Section 1303 requirements in October 2017⁵ but is now proposing a complete reversal with a new, expensive, and purposely onerous framework for insurers that want to continue covering abortion in the Affordable Care Act exchange program. The proposed short implementation schedule is further evidence that the Department means to stigmatize the procedure and coerce insurers into dropping abortion coverage altogether.

This violates congressional intent. Congress passed Section 1303 after rejecting even more extreme alternatives that would have eliminated abortion coverage.⁶ They made clear that, absent a state law to the contrary, insurers offering Affordable Care Act exchange program coverage can decide for themselves whether to cover abortion. The proposed rule’s onerous requirements will upend congressional intent and effectively rob insurers of that decision.

The proposed rule imposes significant costs on consumers that would lead to confusion and potentially jeopardize individuals' health coverage, falling particularly hard on individuals from systemically-oppressed communities.

The proposed rule imposes significant costs on consumers. The Department's estimated consumer cost of nearly \$31 million⁷ will likely be much higher, because it fails to account for such items as the cost of consumer learning regarding the new billing and payment requirements⁸ and the costs insurers will likely pass on to consumers⁹ as a result of implementing those burdensome administrative requirements. Such an outcome would not only undermine one of the Affordable Care Act's primary goals—to reduce health care coverage costs—but the

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 <https://www.regulations.gov/document?D=CMS-2014-0152-0218> at 43

⁵ <https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Section-1303-Bulletin-10-6-2017-FINAL-508.pdf>

⁶ See, e.g., <http://abcnews.go.com/Politics/HealthCare/senators-defeat-abortion-amendment-health-care-bill/story?id=9279079>

⁷ <https://www.govinfo.gov/content/pkg/FR-2018-11-09/pdf/2018-24504.pdf#page=14>

⁸ <https://www.govinfo.gov/content/pkg/FR-2018-11-09/pdf/2018-24504.pdf#page=14>

⁹ <https://www.regulations.gov/document?D=CMS-2014-0152-0218> at 43

<https://www.regulations.gov/document?D=CMS-2014-0152-0123> at 25

administration's oft-repeated goals of "reduc[ing] administrative burdens" and "lowering health care costs for Americans."¹⁰

It will sow consumer confusion and could cause coverage cancellations. A study by research consulting firm Motivate Design determined that requiring two separate payments by consumers seeking to purchase health care coverage could confuse consumers and cause them to forgo making any payment.¹¹ The proposed rule does not address what would happen in the event that a consumer fails to pay their second, smaller payment for abortion coverage. Since that payment is part of their premium, the failure to make payments properly could be grounds for an insurer cancelling the coverage in its entirety. This result would frustrate the primary goal of the Affordable Care Act to make affordable health care coverage widely available. Indeed, the ACA has led to gains in health insurance coverage for many communities of color, including Latinx,¹² Black,¹³ and Asian American¹⁴ women of reproductive age. In a majority of states, more than 80 percent of women of color ages 18-64 now have health insurance; and three states and the District of Columbia have achieved almost universal coverage (95 percent or greater) among women of color.¹⁵ The proposed rule's potential to reverse these trends in particular is reprehensible.

Loss of abortion coverage would threaten consumers' economic security and their health and well-being. Federal restrictions on insurance coverage, such as those in the proposed rule, coupled with other federal and state attacks on abortion access often render the constitutional right to this safe and legal form of health care meaningless. Everyone should have coverage for a full range of reproductive health care, yet too many people are currently denied abortion coverage because of how much they earn, where they live, or how they are insured. Turnaway Study results presented to the American Public Health Association in 2012 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.¹⁶ Additionally, women who are denied access to an abortion have suffered adverse physical and mental health consequences.¹⁷ Such outcomes fall particularly hard on systemically-oppressed communities, including communities of color¹⁸ and transgender people¹⁹ and the LGBTQ community,^{20 21} that already face barriers to obtaining and maintaining health care.

¹⁰ <https://www.hhs.gov/about/strategic-plan/strategic-goal-1/index.html>

¹¹ "Usability Study on Nelson Amendment Implementation Report" by Motivate Design on file with National Women's Law Center

¹² <https://www.guttmacher.org/article/2018/12/gains-insurance-coverage-reproductive-age-women-crossroads>
Despite these improvements in coverage, Latinas continue to have the highest uninsured rates of any group. Immigrant women of reproductive age who are non-citizens have more than three times the uninsured rate of U.S.-born women of reproductive age.

¹³ <https://www.guttmacher.org/article/2018/12/gains-insurance-coverage-reproductive-age-women-crossroads>

¹⁴ <https://www.guttmacher.org/article/2018/12/gains-insurance-coverage-reproductive-age-women-crossroads>

¹⁵ <https://nwlc-ciw49tixgw51bab.stackpathdns.com/wp-content/uploads/2017/02/WOC-Health-Coverage-by-State-2016.pdf>

¹⁶ <https://apha.confex.com/apha/140am/webprogram/Paper263858.html>

¹⁷ <https://www.ansirh.org/research/turnaway-study>

¹⁸ https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-patients-2014.pdf#page=5

¹⁹

Conclusion

The Patient Protection and Affordable Care Act; Exchange Program Integrity proposed rule is clearly a disaster for public health. We strongly urge you to withdraw it in its entirety.

Sincerely,



Jen Herrick
Senior Policy Analyst

<https://transequality.org/issues/resources/transgender-sexual-and-reproductive-health-unmet-needs-and-barriers-to-care> see also

<https://transequality.org/issues/health-hiv>

²⁰ https://www.guttmacher.org/sites/default/files/report_pdf/characteristics-us-abortion-patients-2014.pdf#page=7

²¹ <https://www.kff.org/disparities-policy/issue-brief/health-and-access-to-care-and-coverage-for-lesbian-gay-bisexual-and-transgender-individuals-in-the-u-s>