National
Family Planning
& Reproductive Health Association

June 18, 2012

Secretary Kathleen Sebelius
US Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

Re: Comments on "Certain Preventive Services Under the Affordable Care Act," CMS-9968-ANPRM

Dear Secretary Sebelius:

The National Family Planning & Reproductive Health Association (NFPRHA) is pleased to respond to the Advanced Notice of Proposed Rulemaking (ANPRM) issued by the Department of Health and Human Services (HHS), the Department of the Treasury, and the Department of Labor modifying the new contraceptive coverage rule in the Affordable Care Act (ACA).

NFPRHA is a national membership organization representing the nation's family planning providers – nurse practitioners, nurses, administrators and other key health care professionals. NFPRHA's members operate or fund a network of more than 3,700 health centers and service sites that provide high-quality family planning and other preventive health services to millions of low-income, uninsured, or underinsured individuals in 49 states and the District of Columbia.

NFPRHA supports HHS' proposal to require health plan issuers or Third Party Administrators (TPAs) to provide contraceptive coverage directly to plan beneficiaries with no cost-sharing, which includes no co-pays for contraception and no premium charges for contraceptive coverage. As HHS works to clarify requirements for state-based exchanges, NFPRHA believes the policies outlined below should be included in the final rule to improve health care access for the millions of women who gain coverage of preventive health services through the ACA.

1. NFPRHA asks that HHS implement policies that allow for the greatest access to contraceptive services for women because contraception is basic health care.
2. NFPRHA asks that HHS implement policies that will enable women to receive timely, accurate, and clear information about their contraceptive coverage without cost-sharing.

3. NFPRHA asks that HHS implement policies that prohibit non-exempted, non-profit religious organizations from enacting policies that will be a barrier to contraceptive coverage.
4. NFPRHA asks that HHS prohibit religious employers from carving out specific contraceptive methods from plan beneficiaries' coverage.
5. NFPRHA asks that HHS narrowly define "religious organization" for purposes of the accommodation rule.
6. Finally, NFPRHA asks that HHS issue a final rule that requires self-insured employers to comply with the contraceptive coverage requirement.

Interaction with Current Contraceptive Coverage

Contraception is basic, preventive health care that improves the lives and health of women, children and families. Reducing unplanned pregnancy through the use of reliable contraception improves maternal and child health. NFPRHA strongly supports HHS' policies that continue enforcement of state contraceptive coverage laws that are more protective of consumer access to contraceptive coverage and preempt those state laws that undermine the federal contraceptive coverage requirement. NFPRHA also urges HHS to make clear that these policies will apply beyond the temporary enforcement safe-harbor period. By removing these coverage barriers, women will be better able to choose the method that is the most appropriate and effective for them, no matter where they work.

As HHS recognized in the ANPRM, 28 states have existing legal requirements mandating coverage of contraception in health insurance plans. These state laws were enacted to remedy disparities in women's access to critical preventive health services and ensure that individuals had coverage of basic health benefits important for women and their families. However, several state contraceptive coverage laws allow employers to deny adequate coverage. The federal contraceptive coverage requirement in the ACA will help fill in the gaps in current coverage and further reduce disparities by providing women broad access to contraceptive coverage without cost-sharing.

Allowing a large number of employers to refuse to provide contraceptive coverage would require that women pay out-of-pocket for services that should be available through their health plans. Without contraceptive coverage, these plan beneficiaries will also be at risk for unintended pregnancies and higher rates of poor maternal and infant health outcomes. The preemption language in the final rule should remain strong and ensure that broad state exemptions are narrowed to mirror the federal exemption.

NFPRHA encourages HHS to clarify that grandfathered plans must continue to comply with the applicable state contraceptive coverage laws despite being exempt from the federal contraceptive coverage requirement.

Provide Notice to Plan Beneficiaries

NFPRHA strongly urges HHS to include language in the final rule that guarantees beneficiaries whose employers are subject to the accommodation receive timely, accurate, and clear information about their access to contraceptive coverage without cost-sharing.

NFPRHA members serve those women and men who typically lack access to routine care, many of them reeling from the effects of the recession. On behalf of those patients, NFPRHA strongly supports patients' right to the information, services, and prescription drugs and devices that they think is right for their needs, according to their own beliefs and values. In the ANPRM, HHS rightfully recognizes the importance of providing plan participants and beneficiaries timely notice about contraceptive coverage without cost-sharing. NFPRHA agrees with HHS that health insurance issuers and TPAs should provide such notice. To reach every participant and beneficiary, HHS should require health insurance issuers and TPAs to use multiple methods of providing notice.

HHS should ensure that the summary of benefits and coverage (SBC) required by § 2715 of the Public Health Service Act (PHSA) does not state or imply that a plan beneficiary under this accommodation does *not* have contraceptive coverage. HHS should make it clear in this rulemaking or in future guidance that contraceptive coverage without cost-sharing provided by health insurance issuers or TPAs in accordance with the accommodation does not necessitate providing a second SBC reflecting that coverage.[1]

NFPRHA strongly urges HHS to require that any communications about contraceptive coverage from the health insurance issuer, employer, plan sponsor, or TPA be accurate. HHS should guarantee that all applicable state and federal notices or communication requirements correctly reflect the coverage to which an individual is entitled and do not convey conflicting information.

These proposed notice requirements do not restrict a religious organization's freedom of speech regarding contraception.

Provide Contraceptive Coverage without Barriers

Health insurance issuers offering contraceptive coverage to plan beneficiaries of non-exempted, non-profit religious organizations must automatically and directly provide that coverage, without special enrollment or delay. The ANPRM clearly states that plan beneficiaries

[1] The final rule on the SBC was not drafted with the proposed accommodation in mind. As a result, a misinterpretation of the final rule could result in participants and beneficiaries receiving two SBCs, one reflecting coverage under the employer plan and one reflecting contraceptive coverage provided by the health insurance issuer. Receiving two SBCs would clearly thwart the statutory and regulatory intent of the SBC to allow consumers to understand their coverage and compare coverage options, and would perpetuate the problem of non-uniform disclosure documents by necessitating two documents to convey the full scope of coverage rather than one simple document.

should receive that coverage seamlessly. Thus, it is essential that the final rule and all future guidance are clear that the issuer is obligated to notify beneficiaries at the outset of a plan year that they are automatically covered for contraceptive services and supplies without cost-sharing.

HHS should also reject any policy proposals resulting in a federal birth control coverage plan. Carving out contraceptive services in a completely separate plan would be discriminatory against women and extremely burdensome on any plan beneficiary seeking contraception. Contraception is a proven preventive health benefit and should not be treated as separate or lesser than other services important to women's health. Again, an entirely separate federal birth control coverage plan would be unworkable and a huge burden for women.

No Accommodation for Certain Types of Contraception

NFPRHA strongly urges HHS to prohibit the use of the accommodation to exclude certain types of contraceptives. Doing so would be administratively complex, impractical, and would undermine the goal of the contraceptive coverage requirement. The Institute of Medicine (IOM) report recommended that health plans cover "the full range of Food and Drug Administration-approved contraceptive methods, sterilization procedures, and patient education and counseling for all women with reproductive capacity" and "[a]t least one well-woman preventive care visit annually for adult women."[2] To permit a bifurcation of contraceptive coverage by some religious employers is in direct contradiction with the IOM's recommendations. It would be an administrative challenge for health insurance issuers and TPAs working with multiple religious organizations to design numerous plans with various permutations of contraceptive coverage and inevitably increase the potential for confusion among beneficiaries.

Bona fide religious organizations should not be able to pick and choose among FDA-approved contraceptive methods. Rather, they should decide whether to provide coverage for all contraceptives without cost sharing or whether to relinquish that responsibility to the insurance issuer or TPA. As the ANPRM notes, the goal of the policy and the ACA is to provide contraceptive coverage to women "in the simplest way possible."[3]

Define "Religious Organization" Narrowly

NFPRHA urges HHS to use a narrow and unambiguous definition of a "religious organization" for the purpose of identifying those organizations that may qualify for the accommodation. Using a narrow definition will ease administrative burdens on HHS, plan issuers, and TPAs. The

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[2]Institute of Medicine, *Clinical Preventive Services for Women, Closing the Gaps*, accessed March 2012, http://www.iom.edu/~/media/Files/Report%20Files/2011/Clinical-Preventive-Services-for-Women-Closing-the-Gaps/preventiveservicesforwomenreportbrief_updated2.pdf

[3] ANPRM p. 12

definition of a "religious organization" should *not* include for-profit entities. If the definition is broad or vague, insurance plan issuers, TPAs, and consumers may become overburdened.

Require Self-Insured Employers to Follow the Contraceptive Coverage Rule

NFPRHA urges HHS to require self-insured employers to follow the contraceptive coverage rule as is required for all other employers. Self-insured employers who qualify as a "religious organization" must also follow the rule under this accommodation. Not all self-insured employers have plan issuers or TPAs, but it would not be overly burdensome to require self-insured employers to transfer their health plan administration to some type of TPA. Alternatively, it would be feasible for self-insured employers to become group-insured employers.

Irrespective of the means, HHS should create a system for self-insured "religious organizations" so that plan beneficiaries will receive contraceptive coverage without cost-sharing and without burdensome requirements. NFPRHA urges HHS to maintain the integrity of the contraceptive coverage rule so that all plan beneficiaries, regardless of employer, will be notified of the coverage, provided the coverage, and assured that their privacy will be protected.

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NFPRHA appreciates the opportunity to comment on the proposed rule from HHS, the Department of the Treasury, and the Department of Labor modifying the new contraceptive coverage rule in the ACA to accommodate religious organizations that object to contraceptive coverage, while still providing the needed coverage to plan beneficiaries. If you require additional information about the issues raised in this letter, please contact Nicolette Paterson at 202-293-3114.

Sincerely,

Clare M. C

Clare Coleman,
President & CEO