



AMERICAN ATHEISTS

January 8, 2019

Ms. Seema Verma
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS- 9922-P
P.O. Box 8016
Baltimore, MD 21244-8010

Re: Public Comments Regarding the Patient Protection and Affordable Care Act, Exchange Program Integrity NPRM (CMS-9922-P)

Dear Administrator Verma:

American Atheists writes in response to the request for public comments regarding the proposed rule entitled “Patient Protection and Affordable Care Act; Exchange Program Integrity,” (CMS-9922-P) published November 9, 2018. American Atheists strongly opposes the proposed rule (“Proposed Rule”), which is a thinly-veiled attempt to eliminate insurance coverage for abortion in the Affordable Care Act (ACA) marketplaces. This Proposed Rule is an effort by the Administration to impose its religious agenda on millions of Americans by using bureaucratic chicanery to undermine health coverage and reproductive access for women, and we urge you to immediately withdraw it in its entirety.

American Atheists is a national civil rights organization that works to achieve religious equality for all Americans by protecting what Thomas Jefferson called the “wall of separation” between government and religion created by the First Amendment. We strive to create an environment where atheism and atheists are accepted as members of our nation’s communities and where casual bigotry against our community is seen as abhorrent and unacceptable. We promote understanding of atheists through education, outreach, and community-building and work to end the stigma associated with being an atheist in America. As advocates for the health, safety, and well-being of all Americans, American Atheists objects to efforts to subordinate medical care to the religious beliefs of providers and institutions.

The ACA allows insurance plans participating in ACA marketplaces to continue deciding for themselves whether or not to provide abortion services as part of a comprehensive health insurance plan. Prior to the Proposed Rule, issuers offering coverage in ACA marketplaces, state insurance commissioners, and the federal government, have implemented the ACA in ways that minimize the burdens on consumers and plans, which allow plans to continue providing insurance coverage of abortion as part of comprehensive plans offered in the marketplace. However, in violation of congressional intent, the Proposed Rule would impose onerous burdens on both issuers and consumers that could eliminate abortion coverage in many parts of the country.

I. 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.¹ Issuers have repeatedly expressed their opposition to such requirements, which 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 Department's goal. Just last year, the Department issued guidance reaffirming longstanding regulations on this issue, but now the Department has made a complete reversal by proposing a new, expensive, and purposely onerous framework for insurers that want to continue covering abortion in the marketplace. The fact that the Department is proposing to give insurers such a short time period to implement this Byzantine new rule is further evidence that the Proposed Rule is meant to coerce insurers into dropping abortion coverage. In short, this proposal is just the latest in the Department's attempts to stigmatize abortion and eliminate all insurance coverage of abortion.

Section 1303 of the ACA makes clear that – absent a state law to the contrary – insurers offering marketplace coverage can decide for themselves whether to cover

¹ While the Proposed Rule contemplates some additional costs for insurers and consumers, the Department has likely grossly underestimated the burden this rule would impose.

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 abortion coverage in ACA marketplaces.

II. 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 on consumers. The Department estimates the Proposed Rule will cost consumers more than \$30 million, but the actual cost would likely be much higher. The Administration failed to account for several costs, including the cost of informing consumers about the Proposed Rule’s new billing and payment requirements. Moreover, the Department 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.”² 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.”³

Moreover, 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. In fact, a study by Motivate Design, a research consulting firm, 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.⁴ The Proposed Rule does not address what should happen if a consumer fails to pay, for any number of

² See AHIP, *supra* note 4; ANTHEM, Comment Letter on HHS Notice of Benefit and Payment Parameters for 2016 (CMS-9944-P) (Dec. 22, 2014), *available at* file:///C:/Users/mdavies/Downloads/Anthem_Comment_Letter_2016_NBPP_Proposed_Rule_Final.pdf.

³ 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>.

⁴ Motivate Design, “Usability Study on Nelson Amendment Implementation Report” (on file with Nat’l Women’s Law Ctr.).

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 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's health 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.⁵ 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.⁶

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 imposed upon them. Abortion access is an essential component of reproductive health care. Therefore 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.

⁵ 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>.

⁶ Univ. of California-San Francisco, Turnaway Study, <https://www.ansirh.org/research/turnaway-study>.

III. Conclusion

The Proposed Rule imposes onerous, unnecessary burdens and costs on insurers and consumers which are clearly intended to force insurers to drop abortion coverage altogether. This new proposed scheme is entirely without benefit – it is driven only by the Administration’s desire to impose the religious agenda of a politically powerful group upon all Americans. Doing so will push abortion access out of reach for many, harming the health and welfare of millions of women and their families. For all of these reasons American Atheists calls on the Department to withdraw the Proposed Rule in its entirety. If you should have any questions regarding American Atheists’ opposition to these proposed rules, please contact me at 908.276.7300 x9 or by email at agill@atheists.org.

Sincerely,



Alison Gill, Esq.
Legal and Policy Director
American Atheists