

September 30, 2011

The Honorable Kathleen Sebelius
Secretary
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W
Washington, D.C. 20201

RE: File Code CMS-9992-IFC2

Dear Secretary Sebelius,

Concerned Women for America (CWA) is the largest public policy organization for women with 500,000 members nationwide. We are deeply concerned about the Health Resources and Services Administration (HRSA) guidelines and the interim regulation issued by the Department of Health and Human Services (HHS) in August 2011.

The HRSA, based on ideological recommendations from the Institute of Medicine, released its guidelines on August 1, 2011. These guidelines require most health insurance plans in the United States to fully cover all FDA-approved contraceptives and sterilization procedures. It includes drugs such as Plan B and *ella*, which are known abortifacients and are completely contrary to the intent of the preventive services provision in the Affordable Care Act.

As a result of HRSA guidelines, employers who have pro-life, religious or other moral objections to the use of birth control drugs or abortifacients are now required to provide these very drugs regardless of the dictates of their conscience.

In addition, the interim rule proposed by HHS on August 3, 2011, to accommodate “religious employers” was so narrowly tailored as to be no exemption whatsoever.

This comment addresses the inappropriateness of the HRSA guideline and the inadequate religious exemption proposed by HHS.

The Affordable Care Act requires private insurance plans to cover certain “preventive services;” it did not require covering contraception, and in particular, it never intended to cover abortion services.

The “preventive services” were intended to prevent diseases like breast and cervical cancers. In fact, during the Senate debate on this bill, the focus was on mammograms and women’s health screenings, specifically to ensure that women got the necessary services and treatment to prevent diseases particular to women.

The bottom line is pregnancy is not a disease. We do not need to include contraceptives or abortifacients as “preventive services” since they are not preventing any disease.

In addition, no one is trying to make it illegal to obtain these drugs. However, now employers will be required to pay for these drugs even if they have moral or religious objections. Employers will have no choice but to either violate their moral or religious convictions or drop their health insurance coverage for their employees leading to great hardships for our nation’s families.

The government should not be requiring all Americans to purchase insurance, especially when it includes such controversial coverage. Our religious freedom, upon which our nation was founded, must not be eviscerated in this way to make such outrageous impositions on the American people.

A full and robust religious exemption is clearly needed and CWA vigorously opposes the rule proposed by HHS. In order for an employer to meet the religious exemption, the following conditions must be met: 1) The inculcation of religious values is the purpose of the organization; 2) The organization primarily employs people who share the religious tenets of the organization; 3) The organization serves primarily people who share the religious tenets of the organization; and 4) The organization is a nonprofit as described in Section 6033(a)(1) and Section 6033(a)(3)(A)(i) or (iii) of the Internal Revenue Code of 1986, as amended.

This proposed religious exclusion would apply almost exclusively to churches or places of worship. It provides no protection for individuals or insurers who object to this coverage based on moral or religious affiliation. Because of this gross deficiency, the exemption must be broadened.

The HHS regulation as proposed fails to protect business owners that have strong religious beliefs whose business does not have the inculcation of religious values as its primary purpose. Our nation was founded on religious freedom. Europeans came to America so they could worship according to the dictates of their conscience. This regulation is biased against Americans of faith.

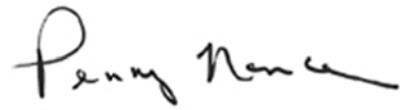
Further, this religious exemption appears to violate the Religious Freedom Restoration Act (RFRA), which Congress passed in 1993 to ensure religious freedom maintained its high degree of protection. RFRA requires that government not substantially burden a person's freedom to practice religion unless there is a compelling government interest, and if, there was a compelling reason, then the least restrictive means must be used.

In this case, mandating that all plans cover contraception could not possibly withstand a RFRA challenge because there is no compelling government interest in preventing pregnancies.

The proposed exemption also appears to violate laws that protect conscience rights. For over 30 years, the Church amendments have protected hospitals from being forced to participate in an abortion or sterilization procedure to which it objects. The Church amendments also say that an individual shall not be required to perform or assist in the performance of any federally funded health service or research activity that violates his/her religious beliefs or moral convictions.

When Congress passed and the President signed the Affordable Care Act, its putative intent was to ensure that Americans have health coverage. It was certainly not to force Americans to pay for coverage that violates their religious beliefs or moral convictions. We, therefore, urge HHS to repeal the HRSA guidelines mandating coverage for all FDA-approved contraceptives and sterilization.

Sincerely,

A handwritten signature in black ink that reads "Penny Nance". The signature is written in a cursive style with a large initial "P" and a long horizontal flourish at the end.

Penny Young Nance
Chief Executive Officer and President
Concerned Women for America