



National Council of Jewish Women

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US Department of Health and Human Services

Public Comments RE: CMS-9992-IFC2, the Interim Final Rule on Group Health Plans and Health Insurance Issuers Relating to Coverage of Preventive Services under the Patient Protection and Affordable Care Act

September 23, 2011

Submitted by Nancy K. Kaufman, CEO, National Council of Jewish Women, Inc.

The National Council of Jewish Women (NCJW) is a grassroots organization of ninety-thousand volunteers and advocates who turn progressive ideals into action. Inspired by Jewish values, NCJW strives for social justice by improving the quality of life for women, children, and families and by safeguarding individual rights and freedoms. NCJW believes strongly that comprehensive, quality, affordable health care services for women are essential to their well-being, health, and economic security. NCJW applauds the US Department of Health and Human Services (HHS) for supporting the Institute of Medicine's (IOM) July 2011 guidance on expanding access to key clinical preventive services for women; yet we are troubled by the inclusion of the proposed "religious employer exemption," or refusal clause. Ensuring that all new insurance plans must offer first-dollar coverage for women's preventive health services under the Patient Protection and Affordable Care Act (ACA) will, in our view, enable more women to access critical care, leading to their improved health, well-being, and economic security. Further, NCJW believes that expanded access should also ensure every woman, regardless of where she works, has the right to exercise her own moral judgment when making personal decisions, including family planning decisions. What follows is an articulation of the particular provisions we support as well as our concerns about the "religious employer exemption" component of the Interim Final Rule.

NCJW strongly supports each of the eight preventive services recommended by the IOM, and we were pleased that HHS chose to adopt all recommendations including, in particular, contraceptive services and supplies. We are also particularly gratified by the inclusion of screenings for intimate partner violence. Our organization has long worked for the elimination of, and protection from, all forms of harassment, violence, abuse, and exploitation against women. Providing a pathway for women to be screened for current or past abuse in the health care setting will better ensure that victims of violence obtain the care and assistance they need.

For NCJW, the protection of women's access to the full range of family planning services is a moral imperative. We have long supported comprehensive, confidential, accessible family planning and reproductive health services, regardless of age or ability to pay, because we believe that these services are an essential element of health care – and preventive health. As Secretary

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Sebelius noted in an op-ed in the Huffington Post, in which she announced the HHS decision about the insurance guidelines for these key services, “[w]hen half of pregnancies in the US are unplanned, we know family planning services are an essential preventive service for women. These services are critical to appropriately spacing and ensuring intended pregnancies which results in improved maternal health and better birth outcomes.”ⁱ We agree, and would add that *all* women require accurate information and access to services in order to prevent unwanted pregnancies.

Recent data shows that the number of underinsured adults – those who face unaffordable medical costs despite having health insurance – rose by eighty percent between 2003 and 2010; and that this population’s reported rate of foregone care was twice as high as those with more adequate coverageⁱⁱ. In keeping with these trends, underinsured women face difficult choices when it comes to family planning, balancing needed health care with economic security. While some states have passed contraceptive equity laws requiring that insurers offering coverage for prescription drugs also cover FDA-approved contraceptive drugs or devicesⁱⁱⁱ, and many employers cover birth control to some degree, financial barriers still impede insured women’s access. Not all employers offer coverage for the full range of FDA-approved drugs. As such, too many women have found that cost barriers have prevented them from accessing contraceptive supplies and related services that would be most effective for them^{iv}. Removing these financial obstacles would support women’s health and economic security by ensuring they no longer need to forego or delay needed care in order to afford other basic needs. Moreover, it would enable more women to truly plan their families, allowing them to become pregnant when they are financially prepared to do so. NCJW believes that every woman must have the right to exercise her own moral judgment when making personal decisions, including those that impact her reproductive life and her economic security. Making contraception widely available and affordable, as the new women’s preventive health benefits are intended to do, will allow women to be the decision makers about the preventive care services they wish to access.

While we are pleased that HHS chose to adopt all of the IOM recommendations, we are deeply troubled by the Interim Final Regulations amendment proposing to exempt “certain religious employers” from the requirement to offer the contraceptive preventive health benefit to their workers. Restrictions that would prevent even one female worker from accessing affordable preventive care, as the proposed refusal clause would do, are unacceptable. Ensuring that all women, regardless of their employer, have access to key preventive contraceptive services is essential not only to women’s health but also to women’s equality, religious liberty, and economic security.

As a faith-based women’s organization, we understand that those who would restrict women’s access to contraception and other reproductive health care services are often motivated by their religious beliefs – seeking to impose them on others. NCJW volunteers and advocates are

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inspired by their Jewish values, and have longed worked for the elimination of obstacles that limit reproductive freedom and religious freedom. For NCJW, these two principles are closely linked; women must be able to make health care decisions and choices about their reproductive health based on their *own* needs, beliefs, and moral judgment, in consultation with their doctor or whomever they wish to involve. As a faith-based organization we also understand the desire of religious organizations to preserve their identity – and are fierce advocates for religious freedom in the workplace. Yet the refusal clause proposed in this regulation would deny individual women their rights, in favor of institutional doctrine. We believe this exemption goes against America's guarantee of equal rights and religious freedom. It would erode a woman's moral agency and religious liberty by impeding her ability to make decisions about the healthcare she wishes to access based on her own conscience, moral values, or faith traditions – regardless of her employer's views of what is morally right or wrong.

In addition to jeopardizing women's religious liberty, denying female employees their right to the contraceptive benefit – without an alternative means to affordably access these services – risks their health, well-being, and economic security by maintaining the status quo where family planning services and supplies are inaccessible due to cost. The exemption would unnecessarily harm a population of working women, from religious studies teachers and administrative professionals to lay leaders and clergy, who may not personally agree with the tenets of their faith-based employer when it comes to contraception.

A recent study by the Guttmacher Institute showed that “most sexually active women who do not want to become pregnant...practice contraception. ...This is true for women of all religious denominations, including Catholics, despite the Church's formal opposition to contraceptive methods other than natural family planning.” Women who may work at religious institutions, irrespective of the doctrine espoused by those institutions, still need access to affordable, effective birth control to avoid unintended or mistimed pregnancy. These women and their families deserve to have the same access to health care promised by the ACA as do women in other professional fields. And yet, the proposed religious exemption would deny them this benefit, leaving burdensome out of pocket costs in place, and leaving women to make choices that may risk their health and well-being. **As such, we respectfully urge the agency to revoke the proposed religious exemption from these insurance regulations.**

NCJW is one of the oldest faith-based organizations for women in the United States working to advance the well-being and status of women; improve the quality of life for women, children, and families; and ensure individual and civil rights. NCJW applauds the decision to make preventive health care more affordable for more women. We believe this is a step forward for social justice in health care. For far too long, financial barriers have prevented women from gaining access to the care they need to stay healthy, plan their families, and support healthy pregnancies. However, NCJW opposes the “religious exemption” offered in the amended Interim Final Rule because it

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would harm women's health, equality, economic security, and religious liberty. It would unfairly preserve the cost barriers that the Women's Health Amendment provision was designed to overcome. NCJW believes that *all* women, wherever and for whomever they work, deserve equal access to affordable contraceptives and to the historic new benefits set forth under the ACA. We appreciate the administration's consideration of our request.

ⁱ Sebelius, K. (2011, August 1). Prevention at the Heart of Keeping Women Healthy. *Huffington Post*. Retrieved from http://www.huffingtonpost.com/sec-kathleen-sebelius/prevention-at-the-heart-o_b_915187.html

ⁱⁱ Schoen, C., Doty, M.M., Robertson, R.H., and Collins, S.R. (2011). Affordable Care Act Reforms Could Reduce the Number of Underinsured US Adults by 70 Percent. *Health Affairs*, 30(9):1762-71. Retrieved from <http://content.healthaffairs.org/content/30/9/1762.full?ijkey=hE02tU8XwgcZ6&keytype=ref&siteid=healthaff>

ⁱⁱⁱ National Women's Law Center. (2010). Contraceptive Equity Laws in Your State: Know Your Rights - Use Your Rights, A Consumer Guide. Retrieved from <http://www.nwlc.org/resource/contraceptive-equity-laws-your-state-know-your-rights-use-your-rights-consumer-guide-0>

^{iv} Sonfield, A. (2011). The Case for Insurance Coverage of Contraceptive Services and Supplies Without Cost-Sharing. *Guttmacher Policy Review*, 14(1). Retrieved from <http://www.guttmacher.org/pubs/gpr/14/1/gpr140107.html>

^v Jones, R.K., & Dreweke, J. (2011). Countering Conventional Wisdom: New Evidence on Religion and Contraceptive Use. Retrieved from <http://www.guttmacher.org/pubs/Religion-and-Contraceptive-Use.pdf>

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