



January 7, 2019

Health and Human Services Secretary Alex M. Azar II
Centers for Medicare & Medicaid Services Administrator Seema Verma
Department of Health and Human Services

Re: RIN 0938-AT53

Dear Secretary Azar and Administrator Verma,

We write to oppose the Department of Health and Human Services' proposed rule to impose separate transaction requirements for Patient Protection and Affordable Care Act (ACA) exchange insurance plans which cover abortion. The proposed rule, if finalized as written, would limit access to healthcare for millions of women, by unnecessarily burdening health insurance providers and purchasers participating in ACA insurance exchanges.

In particular, we believe the proposed rule is misguided for the following reasons:

1. Federal law already stringently restricts public funding for abortions in ACA insurance policies.

Federal law, through the Hyde Amendment, already places tight restrictions on federal funding for abortion, generally only making exceptions in cases where the life of the mother is at risk or in circumstances of rape or incest. When the ACA was enacted, restrictions on federal funding for abortion coverage in subsidized exchange insurance plans were maintained. While ACA subsidized insurance plans could cover abortion procedures, federal subsidies were not permitted to pay for abortions and the law required segregated payments in ACA insurance plans. As such, federal taxpayer dollars explicitly do not pay for abortion procedures within subsidized ACA plans except in limited exceptions.

Despite these clear limits already in place, the proposed rule would onerously burden insurance providers with increased and unnecessary requirements. The effect of rule will be to discourage providers from covering abortion related health care procedures at all. By requiring separate billings and transactions for abortion coverage premiums, the proposed regulation threatens to increase the cost for providers to include abortion coverage within their plans, thereby creating serious financial disincentives for the coverage that millions of Americans rely upon. Rather than ensuring compliance with federal law, the rule seeks to eliminate plans that include abortion and thereby restrict healthcare affordability American women.



2. A majority of states' exchanges offer no or prohibit ACA plans that cover abortion.

While federal law already imposes strict limits on federal funding for abortions in general, numerous states have enacted laws that further restrict abortion coverage within ACA insurance plans all together. To date, 26 states explicitly prohibit ACA insurance plans from covering abortions, including Tennessee and Louisiana which make no exception for the health of the mother or in cases of rape or incest.¹ Increasing burdensome and unnecessary compliance requirements on providers will only increase the number of states where residents are unable to purchase health insurance which covers abortion procedures.

While we recognize that abortion remains a contentious issue, the courts have consistently upheld its legality. Americans should be unhindered in their right to purchase health insurance that includes all medical procedures they may need during the course of their lives. The proposed rule however, blatantly seeks to constrain the ability of millions Americans to obtain comprehensive health insurance coverage.

3. The proposed rule will hurt low and middle income Americans.

By pushing insurance providers away from including abortion service in their plans, millions of American women will be forced to pay out of pocket for healthcare procedures. The estimated consumer burden for separating premium billings alone is \$30.8 million in just 17 states.² Because the regulation is widely expected to cause more insurance providers to drop abortion coverage, it is also increasingly likely that the number of states with exchange plans covering abortion will dramatically decrease.

This will especially hurt low and middle income Americans. Millions of low and middle income Americans rely on exchange insurance plans to cover their healthcare needs, including coverage for abortion. Removing plans from the exchanges that cover abortion will force these Americans to pay out of pocket, creating a significant financial burden on those who oftentimes do not have the resources to cover an unexpected financial burden. The Administration should be working to provide greater certainty in Americans' healthcare and finances. The proposed rule will only do the opposite for millions of Americans.



THIRD WAY

All Americans should be able to access quality and affordable healthcare. Yet, we are gravely concerned that the proposed rule will make obtaining health insurance more difficult and expensive for millions of Americans. We strongly urge you to reconsider finalizing the proposed rule with regards to separate transactions for abortion care within ACA exchange insurance policies.

Sincerely,

Third Way

¹ "Restricting Insurance Coverage of Abortion," Guttmacher Institute. January 1, 2019. Available at: <https://www.guttmacher.org/state-policy/explore/restricting-insurance-coverage-abortion>.

² Katie Keith, "Proposed Rule Would Require Separate Transaction For Abortion Coverage In Exchanges," November 8, 2018, Health Affairs. Available at: <https://www.healthaffairs.org/doi/10.1377/hblog20181108.108447/full/>.