October 6, 2017

Don J. Wright
Acting Secretary
U.S. Department of Health & Human Services
200 Independence Ave., S.W.
Washington, D.C. 20201

R. Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Ave., N.W.
Washington, D.C. 20210

Steven T. Mnuchin
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220

Dear Secretaries Acosta, Mnuchin, and Acting Secretary Wright:

We write on behalf of millions of Americans to express our strong concerns that your departments are removing the requirement that employer group health plans cover contraceptive services for employees.[1] This contraceptive coverage requirement is an important part of the Patient Protection and Affordable Care Act (ACA) for women and families throughout the country, yet you seek to eliminate it for some women based on an employer's, university's, or insurance company's purported religious or "moral" objection.[2] We understand that your departments will be accomplishing this change through the issuance of an interim final rule that becomes effective immediately as of Friday October 6, 2017. Such an action would deny women benefits and services that have resulted in reduced costs of health care for women, a reduction in the rate of unintended and teen pregnancies in the United States, and, most importantly, substantially improved women's health and economic freedom overall. This ill-considered change is discrimination on the basis of sex and may be procedurally deficient from a legal standpoint. Additionally, this action will increase costs to the federal government and the states for Medicaid and other health and social services delivery programs.

The ACA and its implementing regulations require most private health insurance plans to provide coverage for a broad range of women's preventive services and screenings, including all FDA-approved contraceptives and other services for women, without cost-sharing. This means that women do not have to pay out-of-pocket costs for contraceptive care (e.g. copays or coinsurance). Prior to this benefit going into effect, contraception accounted for 30% to 44% of

[1] https://www.federalregister.gov/documents/2017/10/13/2017-21851/religious-exemptions-and-accommodations-for-coverage-of-certain-preventive-services-under-the; https://www.federalregister.gov/documents/2017/10/13/2017-21852/moral-exemptions-and-accommodations-for-coverage-of-certain-preventive-services-under-the-affordable.

[2] Laurie Sobel, Adara Beamesderfer, and Alina Salganicoff, *Private Insurance Coverage of Contraception* (January 17, 2017), https://www.kff.org/womens-health-policy/issue-brief/private-insurance-coverage-of-contraception/.

women's out-of-pocket health care costs.[3] Now, more than 62 million women have birth control services without a copayment.[4] According to the Kaiser Family Foundation, prior to this provision taking effect, more than 20% of women had to pay out of pocket for oral birth control. Now the number is less than 4%.[5] Access to birth control is a crucial element in women's health and well-being. Any action that limits this access is detrimental to the majority of the population.

Access to affordable contraception allows women the liberty to make very personal decisions about when to have children based on when it is appropriate for them and their families. Common sense dictates that if birth control is more readily available, and cost is contained, more women will utilize contraception. Your proposal would have the opposite effect, increasing unintended pregnancy. Unintended pregnancy affects women's freedom to pursue education and career paths with the same ease and flexibility as men. It can drive them out of the workforce and stunt their abilities for professional success. In some instances, unintended pregnancies even endanger a woman's life.[6]

The Centers for Disease Control and Prevention (CDC) defines "childbearing age" as 15 to 44 years old.[7] Women should not have to spend thirty years of their lives worried that an unintended pregnancy will derail their career paths or alter their life plans when affordable contraception can easily reduce that risk. Due to access to affordable birth control, our country currently has its lowest rates of unintended pregnancy—*including teen pregnancy*—in decades.[8] Your proposal would irresponsibly undermine this progress.

Allowing any employer or insurance company with a religious or "moral" objection to contraception to opt out of this requirement will take away women's autonomy to make their own reproductive decisions and put those decisions in the hands of their employers. Subjecting women to the religious and moral beliefs of their employers violates the right to privacy that is so evident in Supreme Court doctrine. Women should have coverage for their critical health care

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[3] Becker, N.V. and Polsky, D., *Women Saw Large Decrease In Out-Of-Pocket Spending For Contraceptives After ACA Mandate Removed Cost Sharing* (July 2015), http://content.healthaffairs.org/content/34/7/1204.abstract.

[4] National Women's Law Center, *New Data Estimate 62.4 Million Women Have Coverage of Birth Control without Out-of-Pocket Costs* (September 25, 2017), http://nwlc.org/resources/new-data-estimate-62-4-million-women-have-coverage-of-birth-control-without-out-of-pocket-costs/.

[6] Institute of Medicine (US) Committee on Unintended Pregnancy; Brown SS, Eisenberg L, editors. *The Best Intentions: Unintended Pregnancy and the Well-Being of Children and Families*. Washington (DC): National Academies Press (US); 1995. 3, Consequences of Unintended Pregnancy. https://www.ncbi.nlm.nih.gov/books/NBK232137/.

[7] Martinez, G., Daniels, K., & Chandra, A., *Fertility of Men and Women Aged 15–44 Years in the United States: National Survey of Family Growth, 2006–2010*, National Health Statistics Report, (#51) (Apr. 12, 2012), https://www.cdc.gov/nchs/data/nhsr/nhsr051.pdf.

[8] Bakalar, N., *Unplanned Pregnancies Hit Lowest Level in 30 Years*, N.Y. Times, Mar. 7, 2016, https://www.nytimes.com/2016/03/08/science/unplanned-pregnancies-hit-lowest-level-in-30-years.html?rref=collection%2Ftimestopic%2F NewEngland Journal of Medicine&action=click&contentCollection=timestopics®ion=stream&module=stream_unit&version=search&contentPlacement=6&pgtype=collection&_r=0.

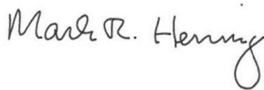
just as men do. Implementation of this rule will surely result in legal challenges on the basis of sex discrimination because of its exclusive impact on women.

Allowing the removal of coverage for contraception might jeopardize coverage for the use of these drugs for other medical conditions. Among other things, they are used to treat conditions such as endometriosis, acne, polycystic ovary syndrome, primary ovarian insufficiency, and problems associated with menstruation, including dysmenorrhea.[9] This is an important consideration that should not be lost in political maneuvering and personal agendas related to the availability of birth control.

The PPACA requirement for coverage of contraception has set our country on a path to better health care for women, reduction of unintended pregnancies, and greater economic opportunity and overall equality for women. To undercut a requirement with so many salutary effects would clearly be a step backward—not only for women, but for our country as a whole.

We will closely monitor any legal challenges to this rule that discriminates against women in our states and negatively impacts our state budgets. We stand ready to take action to protect the best interests of our states and constituents.

Respectfully,



Mark R. Herring
Attorney General of Virginia

Ellen F. Rosenblum
Attorney General of Oregon

Douglas S. Chin
Attorney General of Hawaii

Matthew P. Denn
Attorney General of Delaware

Josh Stein
Attorney General of North Carolina

Thomas J. Miller
Attorney General of Iowa

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[9] Nappi, R. E., Kaunitz, A. M., & Bitzer, J., *Extended regimen combined oral contraception: A review of evolving concepts and acceptance by women and clinicians*. The European Journal of Contraception & Reproductive Health Care, 21(2), 106–115 (Mar. 3, 2016). The U.S. National Library of Medicine. National Institutes of Health. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4841029/.

Maura T. Healey
Attorney General of Massachusetts

Eric T. Schneiderman
Attorney General of New York

Xavier Becerra
Attorney General of California

Bob Ferguson
Attorney General of Washington

Josh Shapiro
Attorney General of Pennsylvania

Thomas J. Donovan Jr.
Attorney General of Vermont

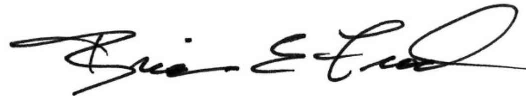
Lisa M. Madigan
Attorney General of Illinois

Janet T. Mills
Attorney General of Maine

Karl A. Racine
Attorney General of the District of Columbia

George C. Jepsen
Attorney General for Connecticut

Peter F. Kilmartin
Attorney General of Rhode Island



Brian E. Frosh
Attorney General of Maryland