

The Honorable Xavier Becerra
Secretary
Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

The Honorable Marty Walsh
Secretary
Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

The Honorable Janet Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Submitted electronically via regulations.gov

Re: Coverage of Certain Preventive Services Under the Affordable Care Act (RIN 1545-BQ35, RIN 1210-AC13, and RIN 0938-AU94)

Dear Secretaries Becerra, Walsh, and Yellen:

On behalf of the Endocrine Society, thank you for the opportunity to provide comments on the Department of Health and Human Services, Department of Labor, and Department of the Treasury (“the Departments”) proposed rule entitled “Coverage of Certain Preventive Services Under the Affordable Care Act.” Founded in 1916, the Endocrine Society is the world’s oldest, largest, and most active organization devoted to hormone research and the clinical practice of endocrinology. The Society’s membership of over 18,000 includes experts in all research and clinical aspects of hormone health, including women’s health and reproductive health. The Endocrine Society advocates for policies that will improve women’s health and increase all individuals’ access to high-quality, specialized, and affordable care. **We are pleased that this proposed rule will expand and protect access to contraceptive services and urge the Departments to consider our recommendations when finalizing these expanded protections.**

Hormonal contraception provides a myriad of health and medical benefits beyond reproductive planning. In addition to decreasing the number of unintended pregnancies and pregnancy-related health risks like preeclampsia, gestational diabetes, and childbirth complications, hormonal contraception also has several non-contraceptive benefits. Indeed, 58 percent of birth control pill users cite these non-contraceptive benefits as reasons for using the method.¹ In fact, fourteen percent of oral contraceptive users—1.5 million people—rely on this method *exclusively* for non-contraceptive purposes.² Endocrinologists frequently prescribe hormonal contraception to treat a variety of conditions, such as endometriosis and polycystic ovarian syndrome (PCOS). Hormonal contraception can also reduce a

¹ Guttmacher Institute. Contraceptive Use in the United States. <https://www.guttmacher.org/fact-sheet/contraceptive-use-united-states>. September 2016. Accessed March 23, 2023.

² Jones RK, Beyond Birth Control: The Overlooked Benefits of Oral Contraceptive Pills, New York: Guttmacher Institute, 2011.



woman's risk of developing ovarian and endometrial cancer.³ For these reasons, contraceptive services are essential healthcare to which all individuals should have access.

Below we express our support for certain provisions of the proposed rule and offer recommendations to strengthen other provisions to ensure the Departments achieve their goal of providing patients with seamless coverage for contraceptive services.

Rescinding the Moral Exemption and Maintaining the Religious Exemption

The Departments propose to reverse a policy issued during the previous administration that allowed employers to deny birth control coverage by citing moral objections. In the proposed rule, the Departments note that there is no legal obligation to provide a moral exemption and that very few providers use the moral exemption. The Endocrine Society supports the rescission of the moral exemption as it will help ensure access to contraceptive and non-contraceptive treatment.

However, this proposed rule retains the expanded religious exemption that was implemented under the previous administration. In 2018, the Departments expanded this exemption to include effectively all non-governmental employers, including publicly traded corporations as well as private colleges and universities sponsoring health plans, with religious objections to covering or arranging for coverage of contraceptive services. The Endocrine Society understands and respects that some providers have religious objections to providing certain types of health care. However, the exercise of these rights should not come at the expense of patients' access to essential and preventive care, and we believe the scope of the religious exemption is too broad. We urge the Departments to reconsider the religious exemption and, at the very least, consider limiting its sweeping scope. To do so, the Departments should strike the exemption for not-closely-held for-profits and reissue a definition of closely-held for-profit that was eliminated in the 2018 Final Rule.

Establishing a New Pathway to Free Contraceptive Services

The proposed regulations would create a new pathway—referred to as an individual contraceptive arrangement (ICA)—for insured patients to receive contraception coverage with no cost sharing. The ICA would fill the existing gap in coverage for enrollees of plans provided by, sponsored, or arranged by an objecting entity claiming a religious exemption from the contraceptive coverage requirement but declining the optional accommodation for enrollees. The Endocrine Society supports the laudable goals of the ICA, and we urge the Departments to implement the program.

Educating and Alerting Consumers

Given that the ICA would operate independently of consumers' typical source of health insurance information, the Endocrine Society urges the Departments to broadly publicize and disseminate information about the ICA to ensure that consumers are aware of their eligibility and ensure the participation of a robust range of providers in the program. We suggest:

- Creating materials in multiple languages that contain information about the ICA and how it can help patients obtain no-cost contraception when insurance does not cover it.

³ National Institutes of Health/National Cancer Institute. Oral Contraceptives and Cancer Risk. <https://www.cancer.gov/about-cancer/causes-prevention/risk/hormones/oralcontraceptives-fact-sheet>. Reviewed March 2012. Accessed March 23, 2023.



- Providing all major retail, independent, and online pharmacies with these educational materials.
- Providing these materials to the full range of providers who offer contraceptive care so they may understand why and how to participate, and how to educate patients about the availability of the ICA.
- Require all health plan sponsors to provide information about the ICA, and where to find more information, regardless of whether they provide contraceptive coverage to beneficiaries.

The Endocrine Society believes that these strategies will help consumers learn more about the ICA and assist them in finding providers.

Recruiting, Incentivizing, and Supporting Participating Providers

The Departments should actively recruit, incentivize, and support providers across specialties to participate in the program. We suggest:

- Ensuring that the entire range of physicians who are involved in administering contraceptive services are eligible for the ICA. For example, primary care physicians, family practitioners, obstetrician-gynecologists, nurse-midwives, endocrinologists, and pediatricians routinely offer contraceptive services and should be eligible. Physicians from anesthesiology departments and other internal medicine doctors may also be involved in the administration of contraceptive care and should be eligible.
- Reimbursing physicians who participate in the ICA in a timely matter and in accordance with the Medicare Physician Fee Schedule.
- Providing a toolkit with information about the ICA to interested providers. The Endocrine Society would be happy to work with the Departments to communicate information about the ICA to our members who provide contraceptive services.

The Endocrine Society believes that implementing these ideas will encourage more providers to participate in the program and, ultimately, expand access to care for those seeking contraception.

Conclusion

The Endocrine Society applauds the Administration for taking steps to protect individual's right to make decisions about their health care and expand access to contraceptive services, which are essential healthcare. The Endocrine Society believes that this proposed rule will help physicians, including our members, provide contraceptive services to those who need them. We urge the Departments to consider our recommendations and finalize the rule as soon as possible.

Thank you for considering our comments. If we can be of further assistance, please contact Judith Gertzog, Manager, Health Policy and Advocacy at jgertzog@endocrine.org.

Sincerely,

Ursula Kaiser, MD
President, Endocrine Society