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April 3, 2023

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

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

The Honorable Julie Su
Acting Secretary
Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

**RE: Coverage of Certain Preventive Services under the Affordable Care Act
(CMS-9903-P) —AHIP Comments**

Dear Secretaries Becerra, Yellen, and Su:

AHIP¹ appreciates the opportunity to provide comments in response to the Notice of Proposed Rulemaking (NPRM) from the Departments of Health & Human Services, Labor, and the Treasury (“Departments”) entitled “Coverage of Certain Preventive Services Under the Affordable Care Act,” published February 2, 2023 in the *Federal Register*.

Patients should have access to effective, quality, evidence-based care they need without concern or fear of discrimination. Preventive health care is essential to promote long-term wellness, reduce incidence of disease, and save money for consumers. Millions of women have benefitted from the ACA requirement that contraceptives and other preventive services be covered by health plans without cost-sharing. In our comments, we detail considerations for the Departments on how to bolster access to contraceptive services at no cost to the individual in the small minority of situations where their employer does not provide this coverage, including areas where operational issues should be addressed.

We are confident with additional input and consideration of operational issues, this proposal will serve the purpose of providing access to contraceptive care while preserving religious exemptions. The proposed individual contraceptive arrangement would apply in limited circumstances where exempt employers do not elect the optional accommodation. Our comment

¹ AHIP is the national association whose members provide health care coverage, services, and solutions to hundreds of millions of Americans every day. We are committed to market-based solutions and public-private partnerships that make health care better and coverage more affordable and accessible for everyone. Visit www.ahip.org to learn how working together, we are Guiding Greater Health.

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letter highlights some outstanding questions about implementation of the proposed individual contraceptive arrangement. For example, additional details will be necessary regarding (1) communications with employers and eligible individuals; (2) identifying and locating participating providers and issuers and protecting provider privacy; (3) processing payment and submitting reimbursement; and (4) reimbursing care across state lines. We urge the Departments to convene additional stakeholder listening sessions and outreach so that issuers, providers, and other interested parties can work together to finalize a rule that is operationally sound.

In detailed comments attached, AHIP offers specific recommendations on each of the above issues.

Sincerely,

A handwritten signature in cursive script that reads "Jeanette Thornton". The signature is written in dark ink and is positioned above the printed name.

Jeanette Thornton
Executive Vice President, Policy & Strategy

AHIP Detailed Comments on the Notice of Proposed Rulemaking

I. Exemptions in Connection with Coverage of Contraceptive Services (45 CFR 147.132 and 147.133)

Moral Exemptions

The rescission of the moral conscience exemption currently available to employer plan sponsors requires clear communications directly with plan sponsors. Currently, employers claiming the exemptions may certify to HHS or DOL that they qualify as an eligible organization. As proposed, the rule does not include details about how employers that have claimed a moral exemption would be notified that this exemption is no longer available.

If finalized, we recommend that the Departments communicate through FAQs and directly with employers about the rescission of the moral exemption, making it clear that the rescission is due to a regulatory change and not an issuer or provider decision, and provide information about timelines and next steps regarding their health plan coverage. The Departments should communicate with affected employers such that the rule's effective date occurs at the start of the next plan year.

Recommendation:

- **Ensure the Departments communicate directly with employer plan sponsors regarding the moral exemption rescission.**

II. Alternate Availability of Certain Preventive Health Services (26 CFR 54.9815-2713A, 29 CFR 2590.715-2713A, and 45 CFR 147.131)

Individual Contraceptive Arrangement for Eligible Individuals

The Departments sought comment on adequate ways to ensure individuals are aware of the proposed individual contraceptive arrangement and determine their eligibility. There are likely limited circumstances in which an individual would seek coverage through an individual contraceptive arrangement. In these circumstances, clear and direct communication to eligible individuals will be paramount. Communications from group health plans and health insurance issuers are typically made directly with the primary plan participant or enrollee and therefore information may not be received by eligible dependents who would elect coverage. The Departments should coordinate with issuers on identifying and notifying eligible individuals of the availability of individual contraceptive arrangements that specifically target eligible individuals and do not add administrative costs and burden.

The proposed rule includes a provision about publishing lists of participating issuers or providers so that individuals seeking care and providers seeking reimbursement can easily find contact information. AHIP recommends the Departments explore ways to streamline the process for

identifying participating providers and issuers that protect provider privacy. One potential option could include establishing a patient portal to locate participating providers in their area. The portal could also be used to simplify reimbursement requests from providers to issuers.

Under the proposed individual contraceptive arrangement, issuers would be reimbursed for services provided via an individual contraceptive arrangement through a Federally-facilitated Marketplace (FFM) user fee adjustment. Because many states are currently operating or moving toward establishing State-Based Marketplaces (SBMs), the Departments should provide additional guidance regarding how issuers and providers should appropriately submit and reimburse services given the potentially reduced number of FFM states in which issuers could seek to apply offsets or partner with other FFM participants.

The proposed rule outlines documentation individuals may use to confirm their eligibility for coverage under the individual contraceptive arrangement, including a summary of benefits and coverage document or a signed attestation, of which the provider would have the discretion to choose which to accept. Both issuers and providers need additional technical and operational details around determining eligibility and other parameters to successfully operationalize this new process. AHIP recommends the Departments establish a review process to ensure that individuals seeking coverage under the individual contraceptive arrangement are not otherwise eligible for contraceptive coverage and should therefore seek coverage through their plan. Establishing a review process would also ensure that individuals without some or all contraceptive coverage under their plan have documented and coordinated records of items and services received for care management and medical history.

As implementation of the individual contraceptive arrangement progresses, it is important to monitor the program and ensure it is achieving its intended outcomes. AHIP recommends the Departments track program participation, including issuer and provider participation rates, and periodically review these metrics to assess whether adjustments are necessary over time. The Departments should also incorporate stakeholder feedback and examples of areas where the processes could be improved.

Recommendations:

- **Provide additional details about communications with employers and eligible individuals, identifying and locating participating providers and issuers and protecting provider privacy, processing payment and submitting reimbursement, and reimbursing care provided in a different state.**
- **Establish a review process to ensure that individuals seeking coverage under the individual contraceptive arrangement are not otherwise eligible for contraceptive coverage, and track program participation and data to ensure programs are working as intended.**

III. Financial Support (45 CFR 156.50)

The proposed rule would require issuers to submit fully signed agreements with providers to HHS in order to receive the user fee adjustment. Due to the nature and structure of the individual contraceptive arrangement, group health plans and issuers may receive requests for reimbursement from nonparticipating providers, or providers with a low volume of patients in the health plan. In these cases, submitting a fully signed agreement would increase the administrative burden for both issuers and health care providers, ultimately delaying timely submission and payment. AHIP recommends the Departments accept an attestation that the issuer is seeking reimbursement for services rendered by a specific provider under the individual contraceptive arrangement.

Recommendation:

- **Accept attestations in lieu of a requirement for signed agreements.**