



DEPARTMENT OF HEALTH & HUMAN SERVICES

Centers for Medicare & Medicaid Services

April 27, 2012

Jay Alan Sekulow, J.D., Ph.D.
Chief Counsel

Dear Dr. Sekulow:

Thank you for your letter to Secretary Sebelius regarding the August 2011 Guidelines on Women's Preventive Services. On March 21, 2012, an Advance Notice of Proposed Rulemaking was published in the *Federal Register* announcing the intention of the Department of Health and Human Services, with the Departments of Labor and the Treasury, to propose changes to regulations requiring certain health insurance issuers and group health plans to provide coverage for recommended contraceptive services without cost sharing. These changes are intended to ensure women's access to these important preventive services while also protecting religious beliefs.

As you know, the law requires non-grandfathered health plans to provide coverage for, among other things, recommended women's preventive health services identified in Health Resources and Services Administration (HRSA) Guidelines, without charging a co-payment, co-insurance, or a deductible. In August 2011, HRSA adopted and released Guidelines for women's preventive services that include all Food and Drug Administration-approved contraceptive services, as prescribed by a provider. HRSA based the Guidelines on recommendations from the Institute of Medicine, which relied on independent physicians, nurses, scientists, and other experts, as well as evidence-based research, to formulate its recommendations. Evidence shows that the use of contraceptives has significant health benefits for women and their families, while at the same time reducing health care costs.

In August 2011, the Departments also published an amendment to the July 2010 Preventive Services Interim Final Rules authorizing an exemption for certain religious employers' group health plans (and any associated group health insurance coverage) from this requirement to cover contraceptive services. Twenty-eight states already required health insurance plans to cover contraception, and the exemption in the amended interim final rules was modeled on an exemption that some of these states adopted. After considering the many comments received in response to the amendment to the interim final rules, the Departments issued final rules on February 10, 2012, retaining the exemption.

At the same time, we released guidance providing a one-year enforcement safe harbor for group health plans sponsored by certain non-profit organizations (and any associated group health

insurance coverage) that, for religious reasons, do not provide contraceptive coverage and that do not qualify for the exemption. The same policy applies to student health plans of non-profit religious colleges or universities with religious objections to this coverage. This means that, consistent with the safe harbor policy, certain religiously-affiliated universities, hospitals, and charities that satisfy the criteria set forth in the guidance will not be subject to any enforcement action by the Departments for failing to provide contraceptive coverage to which they have religious objections for plan years beginning on or after August 1, 2012, and before August 1, 2013.

In his announcement on February 10, 2012, related to these issues, the President committed to rulemaking during this one-year enforcement safe-harbor to ensure women have access to these important preventive services in fully insured and self-insured group health plans while accommodating the religious beliefs of additional religious organizations.

The Advance Notice of Proposed Rulemaking published by the Departments on March 21, 2012, marked the next step in the Administration's efforts to implement the policy announced by the President on February 10, 2012. It presents potential policies and identifies questions for feedback to guide the rulemaking that will guarantee women's access to recommended preventive services—including contraceptives—without cost sharing, while ensuring that additional religious organizations are not forced to pay for, provide, or arrange the provision of any contraceptive item or service to which they object on religious grounds.



As the Departments continue to engage in collaborative discussions and listening sessions with affected stakeholders including religiously-affiliated employers, plan administrators, insurers, faith-based organizations, and women's organizations, the Advance Notice of Proposed Rulemaking gives all Americans a chance to provide formal comments on ideas for implementing the intended policy. The Advance Notice of Proposed Rulemaking can be accessed at: www.gpo.gov/fdsys/pkg/FR-2012-03-21/pdf/2012-6689.pdf. There is a 90-day comment period which ends on June 19, 2012. Comments can be submitted electronically at www.Regulations.gov (Docket ID CMS-2012-0031). Future stages of the rulemaking process will afford additional opportunity for public input.

The Administration remains fully committed to its partnerships with faith-based organizations to promote healthy communities while respecting religious liberty and welcomes the comments of all interested stakeholders.

Again, thank you for your letter. I appreciate your input on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy Hill".

Timothy Hill
Deputy Director
Center for Consumer Information & Insurance Oversight