

September 27, 2010

Secretary Kathleen Sebelius
Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

RE: OCIIO-9995-IFC, Pre-Existing Condition Insurance Plan Program

Dear Secretary Sebelius:

The undersigned organizations – representing diverse women, families, communities and health care providers throughout the United States – are submitting these comments on the Interim Final Rule for the Pre-Existing Condition Insurance Plan Program (PCIP) established under section 1101 of Title I of the Patient Protection and Affordable Care Act (PPACA). The intent of the PCIP Program is to provide uninsured people who have pre-existing conditions with a way to meet their urgent and critical health care needs. However, the PCIPs established by this Rule will fundamentally fail women because the Rule imposes a ban on abortion coverage, even when a woman's health will be harmed by continuing a pregnancy.

Health insurance should safeguard a woman's health, not impose a politically motivated ban on the health care that she needs. The PCIP Program falls short of the standards and aspirations that the Congress, this Administration and the public committed themselves to with enactment of the new health reform law.

Denying coverage to the women who need it most

Both the Congress and the President have repeatedly spoken about ending the insurance industry practice of denying coverage to people with pre-existing medical conditions as an advance offered by the new health reform law. Public opinion research consistently shows that people believe this practice to be repugnant, and ending it is the most compelling benefit of the reform law.¹ Women, among the strongest supporters of health reform, specifically expressed outrage that they and their families could be denied insurance coverage because of pre-existing conditions.

Recognizing the urgent need, as well as the strong support, for this aspect of reform, policymakers developed the PCIP Program to address the immediate insurance needs of people with pre-existing conditions. The temporary high-risk insurance pools which the Program establishes ensure that adults with pre-existing conditions will not have to remain uninsured until 2014, when new state insurance exchanges will offer them permanent coverage. Yet, the Rule for the PCIP Program undercuts this goal, denying coverage for abortion to women with pre-existing medical conditions, even when a woman has a pregnancy that threatens her health.

¹ Research conducted by the Herndon Alliance with Greenberg Quinlan Rosner Research and Lake Research Partners,

As mothers, sisters and daughters, as health care providers and advocates, we talk every day with women whose health will be harmed by the abortion ban imposed by this Rule. By sharing a few of their stories, we hope to communicate the serious threat to women's health posed by the ban. These are just a few of the stories of real, uninsured women with pre-existing conditions who have faced pregnancies that threatened their health:

- A 38-year-old mother of two with severe multiple sclerosis who had to stop work because of her MS. Her husband is out of work, and they are uninsured. When she found out she was pregnant, her doctor warned her that carrying another pregnancy to term could leave her paralyzed.
- A single mother with kidney disease and two daughters who is pregnant. Her doctor told her that if she continued the pregnancy, she would have to go on dialysis and hope to find a kidney donor. She asked her doctor how long she would be likely to live if she gave birth, and he said up to three years.
- A woman, born with a severe congenital heart defect, who had a heart valve replacement when she was a child. Now in her twenties, she owns a small business with her husband, has no health insurance and doesn't qualify for Medicaid. At 18 weeks of pregnancy, she began experiencing shortness of breath and ended up in the E.R. with heart failure. The cardiologists advised her that if she carried the pregnancy to term she would have a 50 percent risk of dying before her baby was born.

These women live every day with major health challenges – diseases and conditions that the insurance industry uses as an excuse to deny them access to health care. The enactment of health reform, and the creation of the PCIP Program, promised help for people facing exactly these challenges. But with the imposition of the abortion ban on the PCIPs, that promise of help has been taken away. Now, instead of being denied care by insurance companies, women with pre-existing conditions are being denied coverage by this Administration, the very people who promised to help them.

The abortion coverage ban in the PCIP program is both harmful and unnecessary

The inclusion of an abortion coverage ban in the Rule for the PCIP program is not only harmful, but also unnecessary. Section 152.19(b) of the Rule sets forth a list of excluded services that will not be covered by any PCIP. The only excluded service noted in that Section is abortion. But there is no statutory justification for denying women this care. Nothing in the language of the PPACA, or any other federal law or regulation, mandates such a restriction. While the Section refers to both the PPACA and the Executive Order on federal funding of abortion services issued on March 24, 2010, prior to the promulgation of this Rule, there were no existing federal restrictions that would prohibit coverage of abortion in the PCIPs.

The law does restrict "qualified health plans" participating in the exchange from using tax credits and cost-sharing reductions for abortion services beyond those permitted under the Hyde amendment, but the PCIPs are, by definition, not "qualified health plans" and therefore are not bound by those restrictions. Furthermore, there will be private funds included in every PCIP created under this Rule, and individuals will have to contribute at least some portion of the cost of their premium. This means that the ban set forth in this Rule prohibits a woman from buying

abortion coverage even with her own private funds – a policy that Congress considered during the legislative debate over health reform and explicitly rejected.

There is also no medical or public health justification for the policy. To the contrary, there are sound medical and public policy reasons for including abortion care in the coverage offered to women with pre-existing medical conditions for whom pregnancy can precipitate serious complications.

Revise the Rule, remove the ban

On behalf of the thousands of women and families whose health and well-being are threatened by the abortion coverage ban in the PCIP Program, we urge you revise this Rule and remove the ban. Our message is simple: We want reform to safeguard a woman's health, not ban abortion coverage.

Sincerely,

Raising Women's Voices for the Health Care We Need

National Organizations

Abortion Access Project
Abortion Care Network
American Medical Women's Association
Black Women's Health Imperative
Coalition of Labor Union Women
EQUAL Health Network
Law Students for Reproductive Justice
Medical Students for Choice
National Asian Pacific American Women's Forum
National Council of Jewish Women
National Council of Women's Organizations
National Health Law Program
National Institute for Reproductive Health
National Latina Institute for Reproductive Health
National Network of Abortion Funds
National Organization for Women
National Women's Health Network
Reproductive Health Access Project
Reproductive Health Technologies Project

Regional, State and Local Organizations

ACCESS Women's Health Justice (California)
Black Women's Health Alliance (Pennsylvania)
Buck's County Chapter of NOW (Pennsylvania)
California Latinas for Reproductive Justice
California Pan-Ethnic Health Network
Cedar River Clinics–Feminist Women's Health Center (Washington)

Emergency Medical Assistance (Florida)
Feminist Health Center of Portsmouth (New Hampshire)
Legal Voice (Pacific Northwest)
Maryland Women's Coalition for Health Care Reform
NARAL Prochoice Oregon
New Mexico Religious Coalition for Reproductive Choice
Philadelphia Chapter of NOW (Pennsylvania)
Pennsylvania NOW
Planned Parenthood of Arkansas and Eastern Oklahoma
Oregon Foundation for Reproductive Health
Southwest Women's Law Center
WCLA – Choice Matters (New York)
Women's Medical Fund (Pennsylvania)
Women's Way (Pennsylvania)
WV FREE (West Virginia)