

September 28, 2010

The Honorable Kathleen Sebelius
Secretary of Health and Human Services
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Attention: OCIO-9995-IFC

VIA ELECTRONIC TRANSMISSION

Dear Secretary Sebelius:

The undersigned organizations submit these comments in response to the interim final rule published on July 30, 2010 at 75 Federal Register 45014 *et seq* (to be codified at 45 C.F.R. pt. 152) regarding the Pre-Existing Condition Insurance Plan (PCIP) program, which was established by the Patient Protection and Affordable Care Act (Affordable Care Act). We strongly disagree with and urge the Administration to reverse the interim final rule's ban on abortion coverage in the high-risk insurance pool program. The PCIP abortion ban is an unnecessary and egregious policy decision that prohibits abortion coverage for women who—because of their health status—are especially in need of comprehensive coverage.

The PCIP Abortion Coverage Prohibition Places an Unfair Burden on Women with Pre-existing Conditions, Placing their Health at Risk

Congress established the Pre-Existing Condition Insurance Pool program to ensure that individuals who have been excluded from the health insurance system because of their health status can access the coverage they need before the state-based health insurance programs are operational in 2014. In order to support the establishment of new high-risk insurance pool programs in all 50 states, Congress appropriated \$5 billion dollars to the PCIP program. Unfortunately, for women whose only coverage option is to purchase a plan under the PCIP program, the interim final rule unequivocally prohibits insurance coverage for abortion services other than for those when the woman's life is in danger or when the pregnancy is a result of rape or incest. See §152.19(b)(4). This ban governs both high risk insurance pools that are administered by the Department, as well as those that are run by 28 individual states.

Women affected by this prohibition are those who may need abortion coverage the most. In order to qualify for the PCIP program, women must have a pre-existing condition and have been denied health care coverage for the previous six months. See 45 C.F.R. 152.14. Thus, by definition, these are women with conditions such as cancer, diabetes, and HIV/AIDS—conditions that may require abortion care in order to avoid further serious risks to their health. For these women, this ban denies the health insurance coverage they may need to protect their health.

In fact, the health conditions likely among women in the PCIP program are commonly linked to high-risk pregnancies, which could require abortion care that may be more complex and costly. Yet, participation

in the PCIP program already comes at a steep price. While the federal government is contributing \$5 billion towards the PCIP program nationwide, the monthly premiums that individuals will be required to pay with their own funds range in the hundreds of dollars. For instance, according to the federal government's health care reform website (healthcare.gov), the premium for an individual in New York's high-risk insurance pool ranges from \$400 to \$600 per month; the monthly premium for an individual in Pennsylvania is \$283; and the premium in Montana ranges between \$190 and \$615. Without insurance coverage for abortion—and already facing high monthly premium costs—the abortion ban leaves women in the PCIP program facing significant and possibly insurmountable obstacles to getting the care they need.

The PCIP Abortion Coverage Prohibition Has No Legal Justification

The ban on abortion coverage under the PCIP program is not compelled by the law. Section 1101 of the Affordable Care Act simply does not address abortion or any other type of health care service. There is nothing about the abortion-related provisions of the Affordable Care Act – or any other existing federal law – that would require imposing this restriction on the PCIP program. In fact, the Congressional Research Service confirmed in a July 23, 2010 memo to the Senate Committee on Health, Education, Labor and Pensions (HELP) that the Hyde Amendment does not apply to the PCIP program and that there is no other federal law or regulation, including the Affordable Care Act and the subsequent Executive Order, that requires restrictions on abortion coverage in that program.¹ Therefore, section 152.19(b) of the interim final rule reflects a policy choice to cut women off from comprehensive health insurance coverage and undermine access to a health care service that approximately one-third of American women will obtain at some point in their lifetime.²

The PCIP Abortion Coverage Prohibition Goes Too Far

The undersigned organizations strongly disagree with policies that ban federal funding of abortion. However, this flawed policy decision goes even further. It not only prohibits federal funds from being used for abortion coverage, but it prevents women enrolled in the PCIP program from using their own private funds for abortion coverage. This policy decision doesn't even contemplate the possibility of restricting the use of federal funds to pay for abortion while still ensuring that women have access to the coverage they need. For instance, there are ways to allow only state or private funds to be used to pay for abortion coverage through the PCIP program. However, the interim final rule prevents both federal and non-federal funds (including state and private funds) from being used to pay for abortion coverage under the PCIP program.

We understand that the intent of the interim final rule was to ensure coverage for abortions in the cases of rape, incest, and the endangerment of the life of the woman under the PCIP program. Unfortunately, the interim final rule does not do that. It simply *allows* PCIP programs to cover abortion in those cases. See 45 C.F.R. § 152.19(b). At the very least, the final rule should make clear that those exceptions are

¹ Congressional Research Service, memorandum, "High Risk Pools Under PPACA and the Coverage of Abortion Services," July 23, 2010.

² The Guttmacher Institute, "In Brief: Facts on Induced Abortion in the United States," May 2010.

mandated in PCIP programs so that women in these circumstances are guaranteed comprehensive insurance coverage throughout the span of the program.

The PCIP Abortion Coverage Prohibition Undermines the Purpose of the PCIP Program and the Health Care Law

The health care reform debate was driven by the fundamental principle that health status should not determine access to health insurance coverage, and the goal of the PCIP program was to give women with pre-existing conditions access to the type of coverage they were previously denied. By denying women coverage for abortion, which the majority of private health plans include today, the interim final rule undermines those goals. The result is that a woman who has to rely on a PCIP program will be unable to access the comprehensive health insurance benefits she deserves because of her health status.

We respectfully urge the Administration to reverse this policy.

Sincerely,

American Civil Liberties Union

American Congress of Obstetricians and Gynecologists

Black Women's Health Imperative

Center for Reproductive Rights

NARAL Pro-Choice America

National Abortion Federation

National Family Planning and Reproductive Health Association

National Latina Institute for Reproductive Health

National Partnership for Women & Families

National Women's Health Network

National Women's Law Center

Physicians for Reproductive Choice and Health

Planned Parenthood Federation of America

Raising Women's Voices for the Health Care We Need

Reproductive Health Technologies Project