

Secretary Michael O. Leavitt
Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201

July 22, 2008

Dear Secretary Leavitt:

The undersigned medical, public health, religious, advocacy, and research groups committed to women's health strongly oppose the Department of Health and Human Services' draft regulations that could significantly limit women's access to basic reproductive health services, including some of the most common forms of birth control. If implemented, these regulations may preempt state laws that protect women's access to health care and undermine the nation's fragile network of safety net providers that serve low income women. We strongly urge the Department to immediately abandon its effort to bring about these ill-conceived and harmful policy changes.

The Department claims that these regulations are needed to educate the public and the health care industry about the scope of certain existing federal refusal clauses. However, contrary to Congress' intent, the draft regulation essentially rewrites those laws to permit institutions as well as individuals to refuse to provide women access to not only abortion, but to contraceptive services and information. Moreover, this rule permits health care providers to refuse to perform any service they deem morally objectionable – which raises critical questions about access to all health care services.

Increasing federal exemptions for individuals and institutions that deny women access to basic information and contraceptive services is especially egregious in light of our current national health care crisis. Seventeen million women are in need of publicly funded contraceptive services. Given this need, the Administration should be working to increase women's access to health care rather than erect additional barriers. Indeed, these proposed changes are contrary to what the American public wants – 73% of Americans strongly support policies that make it easier for women to obtain contraceptive services.

Despite overwhelming public support for contraception, the draft rule seeks to limit access by deliberately confusing contraception with abortion. According to HHS's proposal, abortion can now be defined to include "any of the various procedures—including prescription, dispensing, and administration of any drug or the performance of any procedure or any other action—that results in the termination of the life of a human being in utero between conception and natural birth, whether before or after implantation." Under this broad definition, a range of hormonal contraceptives as well as some non-hormonal devices approved by the FDA to prevent pregnancy fall within the scope of the rule because they may work by interfering with implantation.

This problematic definition of pregnancy runs counter to the government's own longstanding policy, as well as the definition accepted by the American College of Obstetricians and Gynecologists (ACOG). According to ACOG, the establishment of a pregnancy is not completed until a fertilized egg is implanted in the lining of the woman's uterus. The federal government has long accepted this definition of pregnancy and, by extension, what constitutes pregnancy prevention. The regulation to establish safeguards for federally funded research involving pregnant women also clearly states that pregnancy begins with implantation. In addition, even federal regulations as restrictive as the Hyde Amendment say that although funding is not available for abortions, it is available for "drugs or devices to prevent implantation of the

fertilized ovum.” This glaring disconnect between existing federal law and the draft regulation is certain to cause chaos in policy and practice.

As written, the draft rule appears to create a conflict with longstanding requirements under Title X, a critical public health program intended to ensure that women have access to a broad range of contraceptive options and that pregnant women receive non-directive counseling upon request. If implemented, women seeking care at a Title X funded clinic may no longer be assured they could access common forms of birth control or that if pregnant, they will receive information about all of their options.

The draft makes no secret of the fact that it intends to trump state laws that protect women’s access to reproductive health care, including those requiring health insurance plans that provide drug benefits to include coverage of contraception; laws that require hospitals to offer emergency contraception to rape survivors; and laws that require pharmacies to fill patients’ valid medical prescriptions. This Administration should support states’ efforts to protect women’s access to health care, not undermine them.

As such, the regulations raise a number of grave concerns -- along with myriad questions-- about their possible impact –particularly on health care providers and programs such as Medicaid and Title X, which play an especially critical role in providing reproductive health services, information, and referrals to low-income Americans. Given these unanswered questions and the certainty that the proposed regulations will limit access to essential medical services that women depend upon, we urge the Administration to abandon efforts to promulgate this rule.

Sincerely,

Advocates for Youth
American Association of University Women (AAUW)
American Civil Liberties Union
American College of Nurse Midwives
American Jewish Committee
American Social Health Association
American Society for Reproductive Medicine
Americans for Democratic Action
American Nurses Association
American Public Health Association
Association of Reproductive Health Professionals
Black Women’s Health Imperative
Business and Professional Women/USA
Catholics for Choice
Center for Inquiry
Center for Reproductive Rights
Center for Women Policy Studies
CLUW (Coalition of Labor Union Women)
Feminist Majority
Global Health Council
Hadassah, the Women’s Zionist Organization of America
Healthy Teen Network
Ipas
Jewish Women International
Law Students for Reproductive Justice

League of Women Voters of the U.S.
NARAL Pro-Choice America
National Abortion Federation
National Asian Pacific American Women's Forum (NAPAWF)
National Association of County & City Health Officials
National Association of Nurse Practitioners in Women's Health
National Council of Jewish Women
National Health Law Program (NHeLP)
National Family Planning and Reproductive Health Association
National Institute for Reproductive Health
National Latina Institute for Reproductive Health
National Network of Abortion Funds
National Organization for Women
National Partnership for Women and Families
National Women's Conference Committee
National Women's Law Center
Northwest Women's Law Center
Physicians for Reproductive Choice and Health
Planned Parenthood Federation of America
Population Connection
Republicans for Choice
Religious Coalition for Reproductive Choice
Reproductive Health Technologies Project
Secular Coalition for America
Southwest Women's Law Center
The American Humanist Association
The Merger Watch Project
The Sexuality Information and Education Council of the US
Unitarian Universalist Association of Congregations
United Methodist Church, General Board of Church & Society
WIN (Women's Information Network)
YWCA USA