

# National Organization for Women



Terry O'Neill  
President

Bonnie Grabenhofer  
Executive Vice President

Erin Matson  
Action Vice President

Allendra Letsome  
Membership Vice President

September 28, 2011

Ms. Kathleen Sebelius  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Ave., SW  
Washington, D.C. 20201

## RE: CMS-9989-P, Proposed Rule Regarding Establishment of Exchanges and Qualified Health Plans

Dear Secretary Sebelius:

The National Organization for Women is the grassroots arm of the feminist movement, with hundreds of thousands of supporters and members in all 50 states and the District of Columbia. Thank you for the opportunity to offer our comments on this matter of vital interest to all women.

We are writing the Department to urge that in formulating regulations for the new state-based health insurance exchanges and Qualified Health Plans (QHPs) under the Patient Protection and Affordable Care Act (PPACA) [P.L. 111-148] that care be taken to minimize the impact on women's health care of the onerous abortion restrictions imposed by Section 1303 and related provisions. This provision places an unnecessary burden on women of child-bearing age by requiring purchase of a separate insurance policy rider for abortion coverage, it prohibits insurers from determining what would be the true actuarial value for the coverage in setting a fair rate for the rider, it constrains commerce by facilitating states' prohibition of private insurers' coverage of abortion care (as nearly 90 percent of insurers currently provide), and it is simply poor public health policy to complicate and restrict women's access to a legal and safe method for ending a pregnancy. We believe that extra-ordinary measures must be taken by the Department in the implementation of these and related provisions of the Act to assure that the maximum number of women are able to obtain insurance coverage for abortion care, at a reasonable cost, and with a single transfer of funds for payment of comprehensive coverage as well as the abortion care rider.

### ***Our Recommendations:***

*In finalizing rules under the Patient Protection and Affordable Care Act (ACA) for Qualified Health Plans offered through the Exchanges and other entities in those states which allow insurance coverage for abortion care we ask that the Department undertake the following:*

- 1) **Notification** - (155.205, 155.205 (b)) - Provision of information about the availability of abortion coverage riders should be made as part of the unitary application that is required by the ACA for state health subsidy through the Exchanges online, in person, by mail or phone. Use of internet websites that are required by the law to inform prospective consumers of the availability of comprehensive insurance coverage should also clearly inform consumers of the availability of the abortion coverage riders. However, for many potential enrollees an alternate means to provide this information may be required. Mass mailings, newspaper, radio and television announcements, community meetings and targeted outreach will be effective and should be a part of the launch of the exchanges as well as in ongoing efforts. **155.210 (d) (5), 155.230 (b)** - Culturally-sensitive methods should also be incorporated; in some cases, provision of that information in languages other than English will be necessary. Similarly, there should be a requirement that notices be provided in formats appropriate for people with disabilities and that communications between Exchanges and QHP issuers with enrollees who have disabilities be appropriately facilitated.*

- 2) **Enrollment Process - 155.210 (d) (2)** - *It is essential that all potential enrollees be made aware of which of the Qualified Health Plan Issuers offer coverage for abortion care and are provided that information in a clear, factual and impartial manner. 155.210 (b)(1)(iv) - Therefore, HHS should provide additional requirements on Exchanges that would make determinations regarding conflicts of interest for Navigators and others who assist in the application process. We support the recommendation that HHS adopt accountability standards for Navigators and that extensive training of Navigators be required -- especially with regard to women's health needs. 155.210 (b)(2) - We support the proposed rule suggesting that at least one Navigator in each Exchange be a community or consumer-focused non-profit entity as this will be important to effectively serve diverse populations. 155.420 - With respect to special enrollment periods, we believe it is essential to maintain maximum flexibility for qualified enrollees to change coverage whenever certain life events, such as marriage, pregnancy, birth or adoption may require such action. In addition, HHS should recognize that individuals in civil unions or registered domestic partners under state laws should be allowed to enroll. 155.420 (f) - The prohibition against changing coverage tiers during a special enrollment period should be removed to facilitate women's changed needs that may demand more comprehensive -- or less -- coverage. 155.410 - Regarding auto-enrollment, we support the suggestion that if auto-enrollment is deemed necessary for those who fail to make a QHP selection, that the Department establish rules that provide for a default plan that meets the reproductive health care needs of women. And we further support the proposal of a 90 day "free-look" period for the auto-enrollee to determine whether the plan meets their needs.*
- 3) **Payment Simplification - 156.280** - *We further recommend that the Department allow Qualified Health Plan issuers to comply with the separate payment requirement through the issuance of an itemized bill for each portion and collect from each enrollee the separate payments through a single transfer of funds. Without a simplified process such as we suggest, the potential for consumer confusion and policy cancellation is increased. The QHP issuer has the responsibility to maintain the separate itemized accounting for billing and receipt of payments for both the comprehensive health coverage and the abortion rider. A single transfer of funds from the enrollee to cover both is in line with industry standards wherein it is a common practice to bill and receive a single payment for a number of different types of coverage. Finally, as it has been pointed out by others, a broader definition of "enrollee" for Sec. 1303 (b)(2)(B) needs to be made with respect to premium payment responsibility and that "enrollee" should be defined as the subscriber responsible for paying for their own coverage and/or for other adults or children covered in the plan.*
- 4) **Provider Networks - 155.1050, 156.230** - *Women have greater health care needs than men and more problems accessing care. The impetus behind the Affordable Care Act was not only to assure that individuals and families without coverage would be able to obtain health insurance, but that their ability to receive medical care would be assured. Women, especially, must have access to a broad array of specialists and providers. Therefore, HHS should adopt standards to provide for a wide choice of providers in the networks and that allowance is assured for enrollees to move outside of a network -- at no extra cost -- to obtain care when no in-network provider is available.*
- 5) **Rate Monitoring - 155.1020** - *Through states' insurance commission reviews of insurance rates, we suggest that an annual survey of the rates charged for abortion riders be made and the information released to the public, annually. We would hope that the Department will take action to assure that excessive rates are not charged for these riders; this is a serious concern because of the extreme and irrational limitations placed on insurers in determining the rates. The law requires an estimate of the actuarial value of covering abortions by taking into account the cost of the abortion benefit (valued at no less than \$1 per enrollee per month) and cannot take into account any savings that might be reaped as a result of the abortions. We fear that this limitation will result in premium payments that are excessive, further burdening women desiring to have abortion care coverage. In addition, we ask that a routine check of all exchanges in those states which permit such coverage be made annually to determine whether at least one plan in each exchange offers an abortion coverage rider and that this information should be made available to the public by the Department.*

- 6) **Medical Loss Ratio** - As others have suggested, the Department should make clear to QHP issuers that costs associated with Section 1303 should be excluded from the medical loss ratio calculation (Sec. 2718(b)). A potential problem results from Section 1303 "special rules" for QHPs that provide abortion care coverage; complying with these "special rules" should not be identified as "administrative costs" thus reducing the medical loss ratio for those plans. Without this exclusion, QHPs which cover abortion care services will be unfairly penalized. The purpose of the medical loss ratio provision in the Affordable Care Act is to enhance the value of consumers' premium payments by limiting the amount insurance plans spend on non-medical costs.
- 7) **Essential Community Providers - 156.235** - Congress required under Section 1311 (c)(1)(C) of the Affordable Care Act that all health plans participating in the state-based exchanges must contract with essential community providers, including women's health centers. We strongly support this provision and urge that the Department make it incumbent upon all QHPs to contract with women's health care providers, including those that specialize in primary health care, routine gynecological and obstetric care as well as family planning services. It is essential for the QHPs to assure access to providers in order for women to be able to receive care as specified under Women's Preventive Health Services package.
- 8) **Nondiscrimination Standards - 155.120, 156.200** - The inclusion of provisions prohibiting a state, an Exchange, or a QHP issuer from discrimination on the basis of color, national origin, disability, age, sex, gender identity, or sexual orientation is important. The prohibition is to be applied in marketing, outreach and enrollment and we further suggest it should be applied in rate determinations by the Qualified Health Plan issuers.
- 9) **Privacy - 155.260** - We urge the Department to adopt strong standards regarding the protection of personal information that should remain private. These standards should apply to the collection, use and disclosure of information that could be personally identifiable by all of the entities operating under the ACA. There should be a strong enforcement mechanism, with penalties for those who violate privacy provisions.

NOW is in agreement with other commenters that the Department should provide that neither states nor insurance commissioners may impose additional obligations or administrative barriers for Qualified Health Plans or their issuers beyond those currently stipulated in Sec. 1303 of the Affordable Care Act. The potential for that to occur is significant because of the extensive anti-reproductive rights lobbying that takes place in state legislatures to limit access to contraceptive services and abortion care. Permitting states or insurance commissioners to place additional and unnecessary burdens on insurance plans that include abortion coverage would further restrict women's access to vital reproductive health care services. It was clearly the intent of Congress to preserve private insurance coverage of abortion when it is paid for by private funds.

Sincerely,



Terry O'Neill, President  
National Organization for Women