

United States Senate  
WASHINGTON, DC 20510

December 9, 2021

The Honorable Xavier Becerra  
Secretary  
U.S. Department of Health and Human Services  
200 Independence Ave, SW  
Washington, DC 20201

The Honorable Janet Yellen  
Secretary  
U.S. Department of Treasury  
1500 Pennsylvania Ave, NW  
Washington, DC 20220

The Honorable Martin J. Walsh  
Secretary  
U.S. Department of Labor  
200 Constitution Ave, NW  
Washington, DC 20210

Dear Secretary Becerra, Secretary Yellen, and Secretary Walsh;

We are writing to express our concern about reports that insurers are imposing unlawful barriers to birth control coverage. The Affordable Care Act (ACA) requires insurers to cover birth control without cost sharing and provide coverage to the full range of Food and Drug Administration (FDA) approved and cleared contraception. However, we have heard alarming reports that insurers are flouting the ACA's contraceptive coverage protections, threatening women's health and economic security. As the Health Resources and Services Administration undertakes action related to updating the Women's Preventive Services Guidelines, we ask you to issue new guidance to clarify payers' responsibility to provide coverage of birth control without cost-sharing and to take enforcement action against any insurance issuers or health plans failing to comply with the requirements under the ACA.

The ACA increased access to birth control for women across the country. As of November 2020, over 64 million women had coverage for contraception without out-of-pocket costs.<sup>1</sup> Guidance issued in 2015 specifically required plans to "have an easily accessible, transparent, and sufficiently expedient exceptions process that is not unduly burdensome on the individual or a provider."<sup>2</sup> The guidance also makes clear that insurers must defer to recommendations from providers when making a determination of medical necessity when it comes to birth control.<sup>3</sup> The objective of this exceptions process is to prevent insurers from using cost control tools that prevent women from accessing their preferred method of birth control.

Unfortunately, we have heard from patients and providers that some insurers are requiring patients to show they have failed with as many as five different birth control options before the insurer will pay for the method of their choice. Reports of denials and unclear exemptions

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<sup>1</sup> <https://nwlc.org/resources/new-data-estimates-64-3-million-women-have-coverage-of-birth-control-and-other-preventive-services-without-out-of-pocket-costs/>

<sup>2</sup> (FAQs About Affordable Care Act Implementation (Part XXVI), at 4 (May 11, 2015))

<sup>3</sup> *Id.*

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processes raise concerns about whether patients are actually getting coverage for birth control without cost-sharing as required by the ACA.

We therefore ask that you issue additional, comprehensive guidance regarding insurers' responsibilities for contraceptive coverage and that you take swift enforcement action against insurers who fail to comply with those responsibilities. Your robust enforcement of the ACA's contraceptive coverage requirement is vital to the women who rely on its protection. We appreciate your ongoing commitment to this goal and look forward to continuing to work together to achieve it. Thank you in advance for consideration of this request. Please do not hesitate to contact our staff, Colin Goldfinch of the Senate Committee on Health, Education, Labor, and Pensions (202) 224-7675 or Eva DuGoff of the Senate Committee on Finance (202) 224-4515, if you have any questions.

Sincerely,



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Patty Murray  
United States Senator



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Ron Wyden  
United States Senator

CC: Diana Espinosa  
Acting Administrator  
Health Resources and Services Administration  
U.S. Department of Health and Human Services