



NATIONAL
INSTITUTE FOR
REPRODUCTIVE
HEALTH

KELLI CONLIN
President

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

September 23, 2008

RE: Comments Regarding the “Provider Conscience Regulation”

Dear Secretary Leavitt:

We are writing to express our grave concerns about the regulation currently proposed by the Department of Health and Human Services (HHS) referred to as the “Provider Conscience Regulation” (“Regulation”). The proposed Regulation will unnecessarily expand current laws protecting health care workers and threaten access to needed health care services for women all across the country.

The National Institute for Reproductive Health is an innovation institute for state and local organizations working on reproductive health issues. We work with state and local leaders to help women across the country gain access to the full range of quality reproductive health care options, the freedom to exercise their reproductive rights and the opportunity to have healthy pregnancies.

On behalf of the millions of women across the country who depend on federally-funded health care services, we ask you to reject this dangerous Regulation for several reasons. First, the Regulation is vague and lacks clarity in regards to the definition of “abortion.” In a previously leaked draft of this Regulation, HHS defined the term “abortion” to include commonly used FDA-approved birth control methods. Instead of acknowledging the massive public concerns over this language and including a definition of abortion consistent with the medical community and existing federal policy, the proposed Regulation withdraws the definition entirely and leaves it open to personal interpretation and political agendas. The proposed Regulation therefore could allow health care providers, including doctors, nurses, insurance plans, hospitals, and almost any other employee in a health care setting, the ability to deny women access to many forms of commonly used birth control. This Regulation does not reflect the public’s needs or beliefs.

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Virtually all American women will use birth control at some point in their lives. In fact, ninety-eight percent of women aged 15 to 44 who have ever had intercourse have used at least one contraceptive method.ⁱ The American public overwhelmingly believes that everyone should have a right to birth control access: eighty-nine percent of the voting public is in favor of public funding for family planning services.ⁱⁱ In addition, federal funding for family planning programs is mutually beneficial and ultimately saves the federal government money. Nationally, for every \$1.00 spent to provide services in the nationwide network of publicly funded family planning clinics, \$4.02 is saved in Medicaid birth costs that are averted.ⁱⁱⁱ Access to birth control is a basic health care need and it is appalling that HHS is working to restrict women's ability to obtain birth control services.

The Regulation also dangerously expands health care provider's refusal rights to include the provision of information on topics and treatments that they find objectionable for religious or moral reasons. This seriously undermines the traditional ethical and legal obligation health care providers have to provide their patients with complete information on their medical options. As the Regulation is written, it comes in direct conflict with the requirements of the Title X program, which guarantees that the approximately 5 million low-income women accessing reproductive health care services through this important safety-net program will receive non-directive counseling regarding all of their options related to their pregnancy.^{iv} Under the proposed Regulation, women will no longer be guaranteed they will receive the information they need in order to make an important health care decision.

The new Regulation is even more egregious in that it does not provide protections for patients in emergency situations. The Regulation does not address a health care employer's obligations in an emergency. If a health care provider refused to provide health care services for a patient and refused to provide a referral or alternate provider to assist the patient, this could cause serious harm for the women they serve.

This new Regulation is also unnecessary. Existing laws already provide protection to health care professionals to allow for their own individual beliefs. The proposed Regulation does not adequately explain why the expansion and scope of the existing laws need to be changed and expanded. The unexplained need for this Regulation is further muddled by the fact that it may even prevent health care providers from providing the services that they are receiving funding from HHS to provide in the first place.

Finally, millions of women currently depend on publicly-supported health services and their access to care will be seriously jeopardized as a result of this Regulation. The women who depend on publicly-supported health services are the most vulnerable of our society. They include low-income, uninsured and underinsured women who already face many barriers to accessing needed health care, including lack of transportation, lack of affordable child care, and lack of funding to cover the cost of needed services. Without federally funded health care programs, most of these women would not have anywhere else to turn for their reproductive health information and services. These women do not have the luxury to shop around for alternate health care providers that are willing to help

them and health care facilities where they can receive services. By expanding both the types of workers who can refuse services, and the range of services that can be denied, the government will be restricting access to health services for those women who already face significant barriers in accessing basic health care.

With approximately 46 million Americans without health insurance in this country, we should be putting resources into expanding access to health care, instead of wasting much-needed funding on efforts to restrict access to health care.^v We ask that you reject this unnecessary Regulation that will only exacerbate the lack of affordable health care for women in this country, and instead place your efforts into expanding access to health care for those who need it the most.

Sincerely,



Kelli Conlin
President
National Institute for Reproductive Health

ⁱ Guttmacher Institute, “Facts on Contraceptive Use,” 2008, http://www.guttmacher.org/pubs/fb_contr_use.html.

ⁱⁱ National Family Planning and Reproductive Health Association, “Family Planning Facts,” 2008, http://www.nfprha.org/main/family_planning.cfm.

ⁱⁱⁱ Guttmacher Institute, “Facts on Publicly Funded Contraceptive Services in the United States,” 2008, http://www.guttmacher.org/pubs/fb_contraceptive_serv.html.

^{iv} Planned Parenthood Federation of America, “America's Family Planning Program: Title X,” 2007, <http://www.plannedparenthood.org/issues-action/birth-control/family-planning-6553.htm>.

^v U.S. Census Bureau, “Income, Poverty, and Health Insurance Coverage in the United States: 2007,” 2008, <http://www.census.gov/prod/2007pubs/p60-233.pdf>.