

August 27, 2010

VIA ELECTRONIC SUBMISSION

The Honorable Kathleen Sebelius
Mr. Jay Angoff
Office of Consumer Information and Insurance Oversight
U.S. Department of Health and Human Services
Attention: OCIO-9994-IFC
P.O. Box 8016
Baltimore, MD 21244-1850

RE: Comments on Patient Protection and Affordable Care Act; Requirements for Group Health Plans and Health Insurance Issuers Under the Patient Protection and Affordable Care Act Relating to Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections; Final Rule and Proposed Rule; OCIO-9994-IFC

Dear Secretary Sebelius and Mr. Angoff,

Planned Parenthood Federation of America (“Planned Parenthood”) and Planned Parenthood Action Fund (“the Action Fund”) are pleased to submit these comments on the Patient Protection and Affordable Care Act: Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections interim final rules (OCIO-9994-IFC), published on June 28, 2010 at 75 Fed. Reg. 31788 *et seq.* As a trusted women’s health care provider and advocate, Planned Parenthood supports the expansion of patient protections included in these regulations, particularly around the direct access to ob-gyn services.

Direct Access to Ob-Gyn Care

Across the country, Planned Parenthood’s 840 health centers provide essential health care, including routine gynecological exams, breast and cervical cancer screenings, contraceptive services, abortion care, sexually transmitted infection testing and treatment, and HIV testing and education. Each year, more than three million patients – the vast majority of whom have incomes at or below 150 percent of the Federal Poverty Level – rely on Planned Parenthood health centers for the health care they need to stay healthy. In fact, women’s health centers like Planned Parenthood serve as a critical entry point into the health care system for millions of Americans. More than 6 in 10 patients who receive care at a women’s health center like Planned Parenthood consider it their main source of health care.¹

The direct access provision of the Affordable Care Act is an important step forward in recognizing that ob-gyn care *is* primary care for women. We applaud Congress and the Obama administration for creating and implementing a national standard to provide women with direct access to these basic health care services. It is especially important that the interim final rule recognizes the role that non-physician practitioners play in providing ob-gyn services, particularly as the health care system faces increasing shortages of primary care

¹ Gold, RB et al., *Next Steps for America’s Family Planning Program: Leveraging the Potential of Medicaid and Title X in an Evolving Health Care System*, Guttmacher Institute, 2009.

providers. As more Americans become insured, they will increasingly look to fully utilize the skills of nurse practitioners, physician assistants, and other advanced care practitioners.

Along with this acknowledgement of non-physician providers, it is also important to recognize that not all ob-gyn care is provided in the traditional doctor's office setting. For many women, women's health centers like Planned Parenthood are their primary source of ob-gyn care, and we urge the Department to clarify in the final rule that women have direct access to ob-gyn services at women's health centers and family planning clinics—with the same protections given to other providers in the interim final rule.

Additionally, we draw from the experiences of the American Congress of Obstetricians and Gynecologists (ACOG) in working on ob-gyn direct access laws and regulations in 43 states to recommend several additional changes to ensure that the direct access provision translates into meaningful access to ob-gyn care for women. These are:

- No age restriction
- No restriction on provider choice
- No additional cost-sharing
- No limit on self-referrals to ob-gyn care
- Services for which ob-gyn direct access is protected

No age restriction on direct access – The final rule should extend direct access protection to women of all ages, including dependents covered by the participant, beneficiary, or enrollee.

No restriction on provider choice – The final rule should explicitly permit women to choose the ob-gyn she wants to see, not one assigned to her by her health insurance plan or issuer. In addition, this choice of provider provision should make clear that individuals can receive services at a women's health center or family planning clinic with the same direct access protections accorded to any other provider.

No additional cost-sharing – The final rule should prohibit additional cost-sharing for women who directly access (self-refer to) ob-gyn services; penalties for using the ob-gyn direct access option would render the protection meaningless and undermine the intent of Congress. Cost-sharing must remain the same as it for other services and providers in the health insurance plan.

No limit on self-referrals to ob-gyn care – The final rule should specify that health insurance plans cannot limit the number of self-referred ob-gyn visits. Otherwise, there is the possibility that health plans could meet the direct access requirement by allowing one annual visit or well-woman visit a year without a referral, forcing women to get referrals for other ob-gyn care needs and thereby contradicting the intent of this provision.

Services for which direct access is protected – Similar to the above, the final rule should ensure women can access the full range of services offered by the ob-gyn provider that are covered by the health plan. That is, the final rule should ensure that an individual can access all covered services through an ob-gyn provider if such provider offers that care. This is especially important as many ob-gyn providers offer primary care services that might not be considered typical ob-gyn care.

We also commend the interim final rule's requirement that health plans notify beneficiaries, enrollees, and participants of their right to directly access ob-gyn care. However, this notification provision should be strengthened by requiring health plans to use language that clarifies the practical impact of the protection (that is, it should be clear that individuals don't need a "referral" to access ob-gyn care). If any of the additional

protections suggested above are added in the final rule, they should be included in the notification (i.e., there are no age restrictions on this provision; there are no limits on the number of self-referred visits; etc.)

Additionally, the interim final rule recognizes that the statute includes a rule of construction that makes clear the provision does not prohibit health insurance plans from requiring an ob-gyn provider to notify the plan or the designated primary care provider about the medical care provided during a directly accessed visit. The final rule should make it clear that this is not a requirement but is at the option of the health plan. Furthermore, the final rule should clarify that no additional reporting or collaborative requirements can be imposed on ob-gyn providers that are not also imposed on other primary care providers. Any requirement to report to the health plan the services delivered should not be separate and apart from the billing practices of the ob-gyn provider—a condition that is also in line with the minimum necessary standard of the HIPAA Privacy Rule. The congressional intent behind this provision is to ensure women have access to ob-gyn providers as primary care providers, and nothing in the final rule should create an additional burden for ob-gyn providers as compared to primary care providers, such as additional reporting requirements.

We are also concerned about the lack of an enforcement and oversight mechanism for the direct access provision and urge the final rule to authorize enforcement and oversight functions, specify the oversight and enforcement agency, and clarify federal and state responsibilities in this regard.

Patient Designation of Primary Care Provider

Planned Parenthood also supports the provision in the interim final regulation to allow patients to choose their primary care provider (among participating providers) in cases where a group health plan or health insurance issuer requires the designation of a primary care provider. As noted in the introduction, for many women, ob-gyn care is primary care, and ob-gyn providers should be seen as primary care providers, with women having the right to choose an ob-gyn as her primary care provider if she wants. While the interim final rule does not provide a definition of primary care provider, we urge the final rule to give women the option of electing an ob-gyn provider as her primary care provider and to allow qualified ob-gyn providers to contract with health plans as primary care providers.

Thank you for the opportunity to comment on the Patient Protection and Affordable Care Act: Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections interim final rules. If you have any questions, please do not hesitate to contact me at 202-973-4800.

Sincerely,



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