July 28, 2021

The Honorable Janet Yellen
Treasury Department
Attention: CMS–9906–P
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Xavier Becerra
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attention: CMS–9906–P
P.O. Box 8016
Baltimore, MD 21244–8016

Submitted via Federal eRulemaking Portal

Re: Family Policy Alliance Comment Opposing Proposed Rule "Patient Protection and Affordable Care Act; Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond Proposed Rule," RIN 0938–AU60

Dear Secretaries Yellen and Becerra,

Family Policy Alliance is a national organization representing hundreds of thousands of Americans who believe in the sanctity of human life and the rule of law.

We write in strong opposition to the Treasury Department and the Department of Health and Human Services' Proposed Rule, "Patient Protection and Affordable Care Act; Updating Payment Parameters, Section 1332 Waiver Implementing Regulations, and Improving Health Insurance Markets for 2022 and Beyond Proposed Rule."

On the matter of the Departments' recently proposed rule, we must raise three critical objections:

First, the proposed rule, if implemented, would violate law. Specifically, Section 1303 of the Patient Protection and Affordable Care Act (ACA) creates "special rules relating to coverage of abortion services" which permits qualified health plans (QHPs) to provide insurance coverage of

"abortion services."[1],[2] However, QHPs that choose to include abortion coverage are explicitly prohibited from using federal funds to pay for abortion services due to the current Hyde Amendment.[3]

Section 1303(b)(2) of the ACA explicitly states the issuer of a plan "shall collect from each enrollee in the plan . . . a *separate* payment" for the premium cost for the coverage of abortion and the coverage of services excluding abortion.[4] These "separate payments" "shall" be deposited into "*separate* allocation accounts"—meaning one payment is for Hyde-restricted abortion services, and another payment for all other services.[5] In addition, Section 1303 requires enrollees whose plan premium is paid through the employee payroll deposit to make separate payments for Hyde-restricted abortion services and all other services by stating they "shall each be paid by a *separate* deposit."[6]

However, the proposed rule states:

> An issuer will be considered to satisfy the [separate payment obligation] if it sends the policy holder a single monthly invoice or bill that separately itemizes the premium amount for coverage of [Hyde-restricted abortion services]…or sends the policy holder a notice at or soon after the time of enrollment that the monthly invoice or bill will include a separate charge for such services, and specifies the charge.[7]

These two proposed methods are not "separate payments." The Merriam-Webster Dictionary defines "separate" as "set or kept apart" or "not shared with another."[8] If a payment is combined or together, it cannot be "separate." Therefore, HHS cannot claim an itemized bill and a single, combined payment satisfies the separate payment requirement as required by the law. A combined payment is not a separate payment. Indeed, a mere notification of a charge is not a separate payment. Therefore, these two proposed methods are contrary to law and should not be adopted.

Second, this proposed rule causes both confusion and cover-up of a deadly issue. The law and regulations recognize the clear distinction of abortion from health care services. The law requires clear separation on the issue of taxpayer funds to ensure utmost clarity and transparency of where and how funds issued. However, this proposed rule blatantly undermines that transparency and allows confusion and cover-up of the use of taxpayer funds.

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[1] 42 U.S.C. § 18023(b).
[2] 42 U.S.C. § 18023(b)(1)(A).
[3] 42 U.S.C. § 18023(b)(1)(B).
[4] 42 U.S.C. § 18023(b)(2)(B)(i) (emphasis added).
[5] 42 U.S.C. § 18023(b)(2)(B)(ii) (emphasis added).
[6] 42 U.S.C. § 18023(b)(2)(B)(ii) (emphasis added).
[7] 86 Fed. Reg. 35216.
[8] https://www.merriam-webster.com/dictionary/separate.

More importantly, it cannot be overemphasized that this rule attempts to minimize the death of a preborn human. It is critical that not one cent of taxpayer dollars be used in violation of the law, nor in violation of basic human dignity. Each time an abortion occurs, a mother has lost her child and a child has lost its life. It cannot be too much to ask that the Departments maintain the clear, legally required separation to ensure taxpayer dollars do not fund this violent and deadly practice.

Third, the United States Federal Government has a vested interest in protecting the lives of humans, including the preborn. Abortion is a violent act toward both mother and child. We urge this Administration to immediately stop referring to abortions as reproductive "health care" and instead appropriately label them as "procedures that end human life."

To those who identify as human from conception, presenting abortion as a procedure of "care" is to say that at a human's conception, their life should have been considered expendable and their existence can be denied. This is discriminatory. This Administration must stop discriminating against the marginalized community of preborn humans from their conception to birth.

In conclusion, this proposed rule does not comply with the law, the simple understanding of the definition of "separate," or basic human dignity. We urge the Departments to rescind this proposed rule.

Sincerely,

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